

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,  
PENNSYLVANIA

COMMONWEALTH OF :  
PENNSYLVANIA :  
: :  
v. : No.CP-14-0002421-2011  
: No.CP-14-0002422-2011  
GERALD A. SANDUSKY :  
Defendant :  
:

**AMENDED MOTION FOR NEW TRIAL ON THE GROUND OF  
AFTER-DISCOVERED EVIDENCE AND REQUEST FOR  
EVIDENTIARY HEARING**

Defendant, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esquire and the Lindsay Law Firm, P.C., files the following Amended Motion for a New Trial on the Ground of After-Discovery Evidence and Request for Evidentiary Hearing, and in support thereof states the following:

**I. INTRODUCTION**

1. On June 16, 2022, the Defendant through his attorneys filed a Motion for New Trial on the Ground of After-Discovered Evidence and Request for Evidentiary Hearing.

2. As per paragraph 8 of the aforesaid motion the Defendant requested an Evidentiary Hearing to present the expert testimony of licensed psychologist, R. Christopher Barden, Ph.D. on the taint issue.

3. On August 15, 2022, after conference with counsel, this Honorable Court entered an Order scheduling an Evidentiary Hearing regarding restitution and costs for October 28, 2022.

4. In its order of August 15, 2022, this Honorable Court granted until October 11, 2022 to produce the expert report of Dr. R. Christopher Barden. Furthermore:

- a. The Defendant was given until November 10, 2022 to file an amended motion if necessary;
- b. The Attorney General was given until December 9, 2022 to file a response;
- c. This matter was then scheduled for argument and if necessary an evidentiary hearing on February 8, 2023.

5. On November 17, 2022, after receiving Defendant's Motion for Extension of Time, the Court issued the following Order:

- a. The Defendant was given until January 9, 2023 to produce the expert report;
- b. Counsel for the Defendant was given until February 8, 2023, to file an amended motion if necessary;
- c. The Attorney General was given until March 10, 2023, to file a response;
- d. The matter was then scheduled for argument and if necessary an evidentiary hearing and the evidentiary hearing on the fines and costs was also to conclude on May 25, 2023, at 10:00 a.m.

6. This Honorable Court, by Order of January 9, 2023, after a telephone conference with Defendant's Attorney Lindsay and Senior Deputy Attorney General Buck:

- a. Granted defense counsel 10 days from January 9, 2023, and thus to January 19, 2023 to produce the expert report;
- b. All other dates in the prior order dated October 12, 2022 were confirmed.

7. On January 19, 2023, the Defendant filed the expert report of Dr. R. Christopher Barden, Ph.D., JD. (A copy of this report is attached hereto and marked as Exhibit "A")

## II. NEW EVIDENCE

### A. The Shubin SS Interview

8. The new evidence presented in the original motion for new trial filed by the Defendant consisted of the transcript of an interview that took place on January 15, 2018, of SS, now deceased, by Andrew Shubin, Esquire. A copy of the transcript of that interview, which was provided through Discovery by Defendant's civil attorney, Donald Litman in the case of *MS, et al., v. Gerald Sandusky, et al.* in the Court of Common Pleas of Philadelphia County,

Pennsylvania at Case No. 200803005 is attached to this motion as Exhibit “B”.

9. Defendant’s criminal attorney, Alexander Lindsay was contacted about this matter on June 7, 2022, and received a copy of this transcript on June 13, 2022.

10. SS’s personal representative, his mother, filed a civil action in 2019 on behalf of SS’s estate, against Sandusky, 2d Mile and Penn State University alleging that Sandusky molested him sometime around the years 2000 to 2002, which allegedly caused his death in 2018 from a drug overdose. (A copy of this complaint is attached as Exhibit “C”)

11. SS stated to Investigator Anthony Sassano on May 27, 2011, that he didn’t view any act of Sandusky as sexual in nature, never felt uncomfortable around him would tell him if anything inappropriate happened. (A copy of this Investigative Report is attached as Exhibit “M”).

12. After six years of numerous opportunities to make allegations, which he didn’t make, Shubin asked, in the aforementioned interview, what he remembered about showering with Sandusky. SS’s response was “he groped me a couple different times in the shower.” Shubin asked him what that meant, and he responded, “like grab my penis.” Then Shubin asked, “and did he masturbate you?” SS’s response was, “he tried to, I like pulled away and then he just like

stopped." (See Exhibit "B").

13. Shubin's interview with SS shows that Shubin's interview technique was highly suggestive and tainted the memory of SS and caused him to recall events that never took place.

14. Defendant requests an evidentiary hearing to present the expert testimony of licensed psychologist, R. Christopher Barden, Ph.D., on the taint issue. These techniques include asking "do you remember?" type questions. (See Exhibit "B", page 2, 10)

15. The new evidence obtained in discovery in the civil case is relevant in this matter because it demonstrates the techniques used by Shubin to influence the testimony of SS and other young males who, like SS, had previously given statements that denied any wrongdoing on Sandusky's part, but had later made accusations against Sandusky and, in some cases, testified against him in his criminal case.

16. This evidence will be admissible since there is no way it could have been obtained earlier since Sandusky was not served with the SS complaint until 2021, and the complaint did not provide any information that would have alerted Sandusky to the existence of the interview, and receipt of the interview was only recently obtained during discovery. The evidence goes beyond mere impeachment

since it offers circumstantial evidence of perjury and subornation of perjury and, if the jury was aware that they were hearing perjured testimony, the verdict would almost certainly been different.

## **B. The AJ Dillen Transcript**

17. This new evidence is supported by a podcast by another young male, A.J. Dillen, who posed as a victim of Sandusky. (A copy of a transcript of this Podcast is attached hereto as Exhibit "D").

18. In recorded meetings with Dillen, Shubin "corrected" Dillen's version of his encounters with Sandusky, to substantially enhance their settlement value by, for example, moving the location of events to Penn State, from a public park.

19. Dillen questioned Shubin's ways and doubted accusations made against Sandusky. When asked in a Podcast by a Journalist, John Ziegler, about his reaction to Shubin changing his story, he said, "shocked and I am immediately thinking this entire thing is BS. I came as a fake accuser, and he has changed my story. What makes me think he didn't do this with everyone?" (See Exhibit "D")

20. Other alleged victims, including numbers 3(JS) and 7( DS) who were represented by Shubin, told the OAG and state police investigators that Sandusky had never molested them but gave very different testimony at trial.

## **III. BARDEN REPORT – NEW EVIDENCE**

## **A. Barden Analysis of Shubin-SS Interview**

21. Dr. R. Christopher Barden's analysis of Attorney Shubin's interview of SS, the newly discovered evidence, may be found at Exhibit "A", beginning at page 62. According to Dr. Barden:

- a. It was Dr. Barden's opinion that this interview transcript documents highly suggestive, unethical, improper, and abusively leading and memory contaminative interviewing methods by Attorney Shubin. (Exhibit "A", page 62)
- b. Attorney Shubin was not properly interviewing victim SS but improperly and unethically instructing the witness as to the facts Shubin wanted to hear from the alleged victim SS. (Exhibit "A", page 62)
- c. This review of the newly discovered transcript produces at least two Investigative Hypotheses:
  - i. That Mr. Shubin was a negligent attorney who somehow was not aware of the decades of basic science-legal history demonstrating how such improperly leading interviews can manipulate-influence-change and transform the "memories" of witnesses thus tainting the integrity of the legal process; (Exhibit "A", page 62) and
  - ii. An alternative investigative hypothesis is that Mr. Shubin was engaged in an apparently improper and unethical attempt to manipulate and change alleged victim SS's testimony to obtain payments of settlement money for himself and SS. (Exhibit "A", page 62)
- d. Dr. Barden's further and ongoing investigation revealed that other alleged victims in this case also apparently demonstrated

radical changes in their “memory” reports following meetings/interviews/discussions/with Attorney Shubin. (Exhibit “A”, page 62-63)

- e. On the available record, these “memory changes” apparently made the victim’s “new memories” far more financially valuable in future lawsuits and settlements. (Exhibit “A”, page 63)
- f. Dr. Barden’s investigation revealed that Pennsylvania Office of Attorney General was reportedly concerned about Attorney Shubin’s attempts to control the testimony of his clients. (Exhibit “A”, page 63)
- g. Dr. Barden’s initial review of the newly discovered SS – Shubin transcript and his ongoing and further investigation revealed that on May 7, 2011 – SS (currently deceased) according to a police report told Investigator Sassano on May 7, 2011 that he did NOT view any of Sandusky’s behavior around him as sexual in nature and never felt uncomfortable around him. (Exhibit “A”, page 63). Alleged victim SS told the Office of Attorney General Investigator Sassano “*Sandusky is a great role model as he helps people in need.*” (Exhibit “A”, page 63)

**B. Dr. Barden’s Analysis of Trial Testimony of Other “Victims” Influenced by Attorney Shubin**

1. Victim #2 (AM)

22. Dr. Barden’s investigation revealed that alleged victim #2’s (AM) initial statements claimed he was “the boy in the shower” and that he reported suffering NO abuse at all from the Defendant in this case. (Exhibit “A”, page 64)

23. AM did not testify at trial as a witness in Sandusky’s defense,

reportedly because Attorney Shubin actually hid AM at an undisclosed location.  
(Exhibit “A”, page 64)

24. At a hearing regarding the Defendant’s initial PCRA Petition on August 22, 2016, Attorney Shubin was questioned concerning his declination to have his client interviewed outside of his presence and whether or not he hid AM from investigators. Attached hereto and marked Exhibit “E” is a copy of a portion of his testimony which includes the following colloquy:

Q. Did you forbid Mr. McGettigan and/or Mr. Fina and/or any of the agents from interviewing AM outside of your presence?

A. I don’t know that I was ever asked to permit or to - - let me say it this way. I would have expressed strongly that I believed that I needed to be present for AM’s interview, yes.

Q. Why would you - -

A. But I don’t know that I ever said I forbid you. But I definitely would have said that I want to be present.

Q. Did they take any steps to interview him outside of your presence?

A. I don’t know whether - - I don’t know what they did. I’m only aware of the fact that he was never interviewed and I was never, you know - - he was never interviewed, let’s just leave it at that.

Q. Did you at any time make any effort to secrete the whereabouts of AM from anyone on the prosecution team, including the prosecutors and/or investigators?

A. I'm not going to answer that. That's, in my view, covered by attorney/client privilege, so I'm not going to talk to you about conversations or what my client may have done or where he was. And I have never spoken about that and I'm not at issue, and I've never waived that privilege. the answer to that would contain purely privileged information, so I will not share that with you.

Q. Let me ask you this question. Were you ever asked by any of the investigators on that case or any of the prosecutors on the case, were you ever asked where AM was?

A. I don't recall being asked that.

(Exhibit "E", pages 2-3)

25. AM told investigator Curtis Everhart, "never in my life did I ever feel uncomfortable or violated by Sandusky . . . never did Jerry do wrong by me . . . I will never have anything bad to say about Jerry." Attached as Exhibit "F" is AM's Interview with Everhart.

26. AM told Investigator Everhart, "I felt very uncomfortable with the PSP interview process as they would try to put words in my mouth, take my statements out of context. The PSP investigators were clearly very angry and

upset when I would not say what they wanted to hear.” See Exhibit “F”.

27. Dr. Barden noted that the Attorney General’s investigators also suggested that Attorney Shubin was fabricating changed memories. More specifically he notes in his report:

“Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that both Investigator Sassano and Inspector Corricelli reportedly suspected the honesty of Attorney Andrew Shubin with regard to AM’s changed ‘memories’. Investigator Sassano reportedly claimed that Attorney Shubin made a false representation to him (serious unethical misconduct for an attorney) of alleged victim AM’s ‘memories’ of abuse. In addition, Investigator Sassano reportedly rejected AM’s written statement of ‘memories’ as Inspector Correcelli indicated he suspected ‘Attorney Shubin wrote it.’”

(Exhibit “A”, page 65)

2. Victim #3 (JS)

28. Dr. Barden notes in his report that Victim #2, JS’s first interview with the police, that is, prior to therapy with Shubin and/or Macnab that, “Sandusky never did anything inappropriate to him” and “I don’t believe any of this stuff is true and hope he is found not guilty.” A copy of this police report is attached as Exhibit “G”. (Exhibit “A”, page 65)

29. Dr. Barden reports that after six reported meetings with Attorney Shubin and “treatment” with affiliated therapist C. Macnab, JS’s “memory” reports apparently changed radically, and JS then first began to report “memories”

of criminal acts of abuse. (Exhibit “A”, page 65)

30. Dr. Barden reports that after his initial review of the newly discovered SS-Shubin transcript, his investigation revealed that alleged victim JS was reportedly paid \$7.25 million for his “new memories” that emerged AFTER discussions with Attorney Shubin and AFTER “treatment” in therapy with Shubin-affiliated therapist C. Macnab. (Exhibit “A”, page 65)

3. Victim #7 (DS)

31. On page 66 of his report, Dr. Barden notes that based on his review of the newly discovered SS-Shubin transcript, and further ongoing investigation, it was revealed that DS (alleged Victim 7) in 2004 reportedly sent an application for financial aid writing “Jerry Sandusky has helped me to understand so much about myself. He is such a kind and caring gentlemen and I will never forget him.” (Trial Transcript Day 3 at page 138) (Exhibit “A”, page 66)

32. Dr. Barden notes that consistent with other reported evidence about, after multiple (10-15) reported meetings with Attorney Shubin and “therapy” with Shubin-affiliated C. Macnab, DS’s reported “memories” were apparently radically transformed. (Exhibit “A”, page 66)

33. After exposure to Shubin and MacNab, DS stated that “through counseling different “memories” were “triggered” . . . that doorway that was

closed has since been opening more through counseling and different things I can remember a lot more detail that I had pushed aside then” (Trial Transcript, day 3 page 143) (Exhibit “A”, page 66).

**C. Dr. Barden’s Analysis of Trial Testimony of Other “Victims” Apparently Testifying by Way of Recovered Repressed Memory**

1. Victim MS

34. Dr. Barden in his report makes reference to other alleged “victims” in this case which are not necessarily linked to Attorney Shubin, but nonetheless were testifying under the same pernicious assumption, that their testimony was Recovered Repressed Memory (RRM).

35. On Page 105 of is report, Dr. Barden makes reference to alleged victim “MS” who in 2016 wrote “Undaunted: Breaking my Silence to Overcome the Trauma of Child Sexual Abuse” in which he reported radically transformed new memories of childhood abuse. (Exhibit “A”. page 105)

36. Dr. Barden said MS disclosed classic RRM-MPD “dissociation” therapy methods. For example, he reportedly printed a conversation with his “inner child” in which he recovered a new (developmentally virtually impossible) memory of being abused at two years of age. (Note: Virtually zero chance of accuracy as 2 yrs olds’ memories are quite unreliable due to the well-documented

process of infantile amnesia). (Exhibit “A”, page 105)

37. Dr. Barden discusses MS’s disclosed testimony as follows:

He said “this is what I do now for my inner child I tell him (note the bizarre, debunked,, inherently unreliable Multiple Personality aspect of this reported conversation with MS’s “inner child”) that it is safe to disclose, to admit what happened, to me”. MS noted that he “had to access the traumatized child self “[this is an example of junk science RRM-MPD therapy for which therapists lost their license].. in order to heal. MS further writes, “I had kept my child self locked up in the prison of my pain and my silence where he (the “inner child” personality) couldn’t grow up.” (This is classic Multiple Personality Ideology junk science). (Exhibit “A”, page 105)

2. Victim #4 BH

38. Dr. Barden notes that another victim, BH reportedly stated at trial...

“I have spent, you know, so many years burying this in the back of my head forever”. (Exhibit “A”, page 106)

3. Victim #6 ZK

39. According to Dr. Barden, Victim #6 ZK’s attorney, Howard Janet explained in an interview how ZK and the other alleged victims could “create a bit of a Chinese wall in their minds. They bury these events that were so painful to the deep in their subconscious.” (Exhibit “A”, page 107)

40. Dr. Barden calls this “classic RRM-MPD-DISS pernicious myth – yet

another gullible, science-uninformed believer.” (Exhibit “A”, page 107)<sup>1</sup>

**D. Dr. Barden’s Analysis of Transcript of Interview of Attorney Shubin with “sting investigator” AJ Dillen**

41. Dr. Barden reviewed the newly discovered transcript of the podcast which includes the interview of Attorney Shubin with “sting investigator” AJ Dillen. (Exhibit “A”, page 67)

42. In Dr. Barden’s opinion, this transcript provides further corroborative evidence supporting the investigating hypothesis that Attorney Shubin and therapist MacNab were engaged in improper, manipulative, memory contaminating interviewing practices. (Exhibit “A”, page 67)

43. In the Dillen transcript, Shubin strives to manipulate and change the “facts” of Mr. Dillen’s reported allegation of “memories”. (Exhibit “A”, pages 67-68)

44. Dr. Barden’s position was that Shubin’s conduct on this newly discovered transcript, supports the investigative hypothesis that Shubin’s goal was to manipulate the “memories” of alleged victims to enhance their monetary value for civil litigation. (Exhibit “A”, page 68)

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<sup>1</sup> It would appear the RRM testimony of any one of these witnesses would be highly counterintuitive and simply unbelievable. But, all of them?

45. Dr. Barden notes that this transcript and the other newly discovered transcript of Shubin with alleged victim SS contain evidence of unethical and potentially criminal misconduct and should be properly reported to the Office of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania. (Exhibit “A”, page 68)

46. As AJ Dillen reportedly said in the podcast interview with journalist John Ziegler “I was shocked (that Shubin brazenly changed my story) and I am immediately thinking this entire thing (Sandusky investigation/trial) is BS. I came as a fake accuser (conducting a sting investigation) and he (Shubin) changed my story “to produce a new and cash-valuable ‘memories of abuse.’ What makes me think he didn’t do this with everyone?” (Exhibit “A”, page 68)

47. Dr. Barden stated that, in reviewing the newly discovered transcripts of Attorney Shubin’s interviews with alleged victim SS and AJ Dillen support the Investigative Hypothesis, that Shubin (and his affiliated therapist Macnab) were:

- a. negligent of the science-history demonstrating the inherent unreliability of RRM-MPD-DISS notions as well as science showing that leading-suggestive interviews can improperly “change-manipulate memories” leading to substantial taint and defects in the integrity of the legal process and/or
- b. were engaged in an unethical and/or criminal scam to manipulate witnesses to produce ‘new memory claims of abuse’ and thus obtain large settlement sums in civil litigation.

### **III. DR. BARDEN REPORT-BASIC ESSENTIAL SCIENCE, THE DEBUNKING OF THE PSEUDO PSYCHOLOGICAL CONCEPT “RECOVERED REPRESSED MEMORY”, CALLED “JUNK SCIENCE” WHICH PERMEATED THE SANDUSKY TRIAL**

48. In footnote 2, page 20 of Exhibit “A”, Dr. Barden says this”

This case: On this record, it appears that the judges, prosecutors, and defense lawyers in PA v. Sandusky were uninformed and misinformed with regard to the relevant science and history. *ALL failed to know, understand, comprehend, and properly apply the internationally reported essential science and history that was so relevant and essential to a proper investigation and trial in this case.* On this record, this essential information was never presented to the uninformed,, misinformed jury. The attorneys failed to properly seek and conduct a FRYE hearing regarding admission of the novel, unproven, controversial, inherently unreliable evidence in this trial regarding “blocked”, “buried”, “changing memories”. Highly improper, coercive, and abusive interviewing methods and other unreliable procedures failed minimal standards of care. The legal professionals involved did not know nor realize that much of the RRM-MPD-DISS ideology and evidence investigated and presented in the case has been carefully reviewed and then *rejected by the relevant scientific community and also excluded by courts in multiple states following proper Frye and Daubert hearings.*

#### **A. Dr. Barden Report -The Essential History of Investigating and Prosecuting Abuse Cases**

49. Dr. Barden notes that in complex cases like the one under review, it is essential that the professionals involved (investigators, lawyers, judges, therapists, etc.) know, comprehend, and properly apply basic history science knowledge. (Exhibit “A”, page 15)

50. The infamous Day Care Hysteria and related cases of abusive mis-interviewing led to science-informed protocols for proper interviewing methods noting a wave of infamous criminal cases where improper, abusive, memory-manipulative, repetitive, interview practices led to innocent people spending years in jail including the cases of McMartin, Kelly Michaels, Wenatchee, Little Rascals and others. These tragic, infamous cases demonstrated how improper interviewing methods could destroy the integrity of the legal process. (Exhibit “A”, page 15)

51. Dr. Barden refers to the satanic cult hysteria, multiple personality disorder hysteria, “recovered repressed memories” hysteria, “traumatic amnesia” claims and “memory wars I” stating that “In the hysterias of the 1980s and 1990s, thousands of therapist-book-movie-induced false memories – many debunked by FBI and other investigations of horrific abuse in adults and children resulted from poorly trained therapists adopting the inherently unreliable RRM-MPD-DISS ideologies and methods. (Exhibit “A”, page 16)

52. Vulnerable witnesses often incorporate suggested facts or narratives or repeated instructions from an interviewer’s questions or other sources into their memories-resulting in actual changes in the memory of the witnesses. Repeated questioning is a particularly powerful method of producing changes in the

memories of vulnerable-changes the witness may not be aware of. (Exhibit “A”, page 16)

53. Poorly trained, science-uninformed, unethical psychotherapists by the thousands created a tsunami of false memories of abuse, cult abuse, “human sacrifice abuse” and other hysterical “memories” in the 1980s and 1990s. (Exhibit “A”, page 16)

54. According to Dr. Barden, in this era thousands of abuse claims based on “recovered repressed memories” (RRM) and “dissociated memories” were investigated and debunked by the FBI (led by Special Agent K. Lanning and the National Center for Child Abuse and Neglect) finding essentially zero corroborating evidence for over 12,000 cases of recovered memory allegations of horrific abuse based on “memories starting to come back”, “buried memories, “blocked memories” and other typical RRM-MPD-DISS ideologies and methods. (Exhibit “A”, page 17)

55. Dr. Barden states that: The legal system adopted Frye and much later Daubert-Kumho Doctrines and methods for excluding unreliable junk science such as RRM-MPD-DISS ideology tainted evidence so prominent in this case. (Exhibit “A”, page 17)

56. Dr. Barden states:

“With regard to the RRM-MPD-DISS controversial ‘memory’ claims that were so essential in the investigation and trial of this case – and so totally ignored by the science -uninformed and/or corrupt PA investigators, lawyers, and judges, dozens of the world’s leading experts in the relevant sciences have spoken publicly and clearly on the key issue of the reliability of RRM-MPD-DISS ideology and ‘dissociated’ ‘blocked’ ‘buried’ or ‘repressed’ memories of trauma that are ‘recovered’ ‘clarified’ ‘put together’ ‘start coming back’ or similar descriptions following multiple interviews/therapy/or exposure to RRM-MPD-Dissociation ideology.” (Exhibit “A”, page 18)

57. Dr. Barden also states:

“Decades of research and scientific debate have clarified over and over again that the notion of traumatic events being somehow ‘repressed’ and later accurately recovered is one of the most pernicious bits of folklore ever to infect psychology and psychiatry. This folklore provided the theoretical basis for ‘recovered memory therapy’ – arguably the worst catastrophe to befall the mental health field since the lobotomy era.” (Exhibit “A”, page 18-19)

#### **A. Dr. Barden Report – Confirmation Bias**

58. Dr. Barden notes that confirmation bias is one of the most serious of all investigation errors in law enforcement, science, law, medical diagnosis, and other professions. There are many examples of confirmation bias in this case. (Exhibit “A”, page 21)

59. Confirmation bias is “the tendency to test one’s beliefs or conjectures by seeking evidence that might confirm or verify them and to ignore evidence that might disconfirm or refute them.” (Exhibit “A”, page 21)

60. According to Dr. Barden, the U.S. Department of Justice calls investigations via questioning of alternative hypotheses essential for the integrity of an investigation. (Exhibit “A”, page 22)

61. In stark contrast to proper conduct, on this record, Commonwealth v. Sandusky demonstrates an historically egregious example of the dangers of extreme confirmation bias. (Exhibit “A”, page 22)

62. Dr. Barden, in his report, refers to a recorded statement of Investigator Leiter, which is essentially a “confession” of profound confirmation bias, more specifically Dr. Barden states this:

In stark contrast to proper conduct, on this record, PA v. Sandusky demonstrates an historically egregious example of the dangers of extreme Confirmation Bias. In some of ***most essential evidence in this case***, Inv. Leiter recorded statements during the interview of BH on April 21, 2011. Inv. Leiter forgot his microphone was “live” and inadvertently disclosed in detail an extraordinarily improper Confirmation Bias strategy (ie Leiter claimed he “knew” beforehand what witnesses ***should*** say). Even more importantly, Inv. Leiter in his recorded discussion also disclose in detail the government’s highly improper, deeply corrupt, systemic, abusive, repetitive process of manipulating witnesses’ “memories” over and over again until the witness gave in and agreed with Inv. Leiter’s pre-conceived version of the evidence. Inv. Leiter disclosed, abusive, systemic government Witness Memory Manipulation strategy is unprecedented in my 30-years of experience reviewing cases throughout the US. (See April 21, 2011, recorded interview of alleged victim BH and detailed quotes/analysis below). Inv. Leiter’s April 21, 2011 “taped confession” of a highly improper, abusive, government program of memory manipulation of witnesses should have been one of the key

issues at the trial of this matter including motions to exclude all witnesses who experienced the Government Memory Manipulation Interviews disclosed by Inv. Leiter.  
(Exhibit “A”, pages 22-23)

63. Dr. Barden notes that one hallmark of such interviewer bias is the single-minded attempt by an interviewer to gather only confirmatory evidence and to avoid all avenues that may produce disconfirming evidence. (This is, again, the highly improper, evidence-manipulative process that Investigator Leiter “confessed to” on April 21, 2011). (Exhibit “A”, page 23)

64. Dr. Barden notes that it is extraordinary that this most essential information was never presented to the uninformed, misinformed, misled jury in the Sandusky case. (Exhibit “A”, page 23)

#### **B. Fervently-Believed-In-But-False-“Memories” of Abuse**

65. Dr. Barden notes that years of research, clinical experience, jury trial investigation and legal case records clearly documented and demonstrated that multiple methods, including exposure to abusive-leading-suggestive-repetitive interviews (e.g. Investigator Leiter’s and Attorney Shubin’s methods in this case), misleading information provided by Police Interviews, Interviews/Therapy with Science Uniformed Therapists and Civil Attorneys, exposure to false and misleading ideas about “recovered repressed memories”, “blocked memories”,

“buried memories”, and improper, leading, suggestive psychotherapy - - can and have induced Fervently-Believed-In-But-False-“Memories” of horrific abuse in many thousands of people. (Exhibit “A”, page 24)

### **C. Minimal Standards for Investigations-Trials of Abuse Cases**

66. Dr. Barden notes that to reduce the risk of false memories and to protect the integrity of the legal system, the relevant scientific community and law enforcement have worked to create standards of care in abuse cases. None of these standards were followed in the investigation and trial of Jerry Sandusky:

- a. It is essential that all interviews be properly recorded to permit proper review by supervising investigators, expert witness/consultants, judges, and defense attorneys. (Exhibit “A”, page 25)
- b. It is essential that investigators be properly trained in science-informed, abuse interview methods/protocols to protect witnesses from misleading-suggestive-repetitive-coercive-unrecorded-abusive interviews from police-therapists-lawyers. (Exhibit “A”, page 26)
- c. It is essential that all non-normal “memories” (like many in this case) be properly reviewed and explained to the jury by a memory-false-memory-RRM-MPD-DISS expert witness who generates and walks a jury through evidence for alternative investigative hypotheses. (Exhibit “A”, page 26)
- d. It is essential to chart all interviews with all witnesses as to date, interview, location and who was in the room during the interview. (Exhibit “A”, page 26)

- e. It is essential that on each recorded interview the witness be asked to state all previous interviews. (Exhibit “A”, page 26)
- f. It is essential that all investigators be properly trained to understand that they are not reliable human lie detectors and must therefore search for corroborative evidence and test alternative investigative hypotheses not overly and improperly rely upon unreliable “clinical experience” or “clinical judgment” or detective “intuition”. (Exhibit “A”, page 26)
- g. It is essential that all investigators be properly trained to understand the necessity of avoiding confirmation bias by generating and testing alternative hypotheses including the alternative hypothesis that false/exaggerated pseudo-memories were generated from the mis-interviews/improper therapy by psychotherapists, civil attorneys, and poorly trained/corrupt investigators. (Exhibit “A”, page 27)
- h. It is essential that witnesses should never be subjected to multiple (more than 2) unrecorded, repetitive biased interviews-therapy by investigators, therapists, and civil attorneys offering financial payments for “new” abuse memories. (Exhibit “A”, page 27)
- i. All complex memory cases – especially those lacking corroborative evidence- should involve a competent Expert Witness in the Science (not “therapy”) of memory-false memory-contamination-science-history. (Exhibit “A”, page 27)

67. Considering the experience, training, and judgment that's necessary to properly investigate a case of this nature, it is significant to note the investigators from the Attorney General's Office in this, the most prominent child abuse case in the history of America, among other things were narcotics

detectives.

#### **IV. DR. BARDEN'S INVESTIGATIVE SYPOTHESES, QUESTIONS FOR FUTURE INQUIRY, AND RELEVANT EVIDENCE FROM THE RECORD REVIEW**

68. Dr. Barden notes that given the limited evidence regarding a number of issues in this case, he is not able to provide expert opinions about a number important investigative questions.

69. These questions can only be answered in a detailed public hearing to explore these very important issues.

##### **A. Investigative Hypotheses in this Case**

70. Dr. Barden provides several investigative hypotheses, or combinations, and asks the question which is correct. They are as follows:

- a. The defendant is guilty as charged and the many, well-documented, very serious errors in the investigation and trial of this case are irrelevant;
- b. The defendant may be guilty or innocent but the many, well-documented, serious errors in the investigation and trial of this case as well as a science-uninformed media frenzy and collusive local political corruption deprived a citizen of PA of a fair and honestly conducted trial as well as misled an unsuspecting jury into rendering a false verdict;
- c. The defendant may be guilty or innocent but the “changing uncorroborated abuse memories” of many or all of the “victims” were the product of investigators’, lawyers, and/or

therapists improper mis-interviewing methods, improper-witness memory tampering, science-uninformed psychotherapists (Gillum, MacNab) who apparently indoctrinated patients-clients into gullibly believing some of the most controversial and dangerous pseudo-scientific, inherently-unreliable notions in the history of psychology and law;

- d. The defendant may be guilty or innocent but the level of improper misconduct in this case is highly unusual, even historic, and includes:
  - i. Investigators (reckless, highly improper, memory-contaminative interviewing methods as documented by Inv. Leiter in his April 21, 2011 recorded statements during the break in interviewing BH.
  - ii. Judge Cleland's reportedly secret, off the record, Hilton Garden Motel meeting that produced a held a "sure conviction, impossibly rapid trial schedule", a refusal to provide time for defense attorneys to even review basic evidence or retain a competent expert in Memory-False Memory Science, and continuing to hide the secret Motel meeting for 4 yrs, in collusion with Fina and Amendola.
  - iii. Legal professionals Cleland-Fina-Amendola entered into an agreement apparently to hide the secret Hilton Garden Motel meeting, quickly convict the defendant, and thus prevent \$500 million in damages to the local economy from the looming, threatened NCAA "death penalty" for Penn State football this hypothesized agreement explains the very unusually long list of negligent failures to provide the jury with competent

Science of Memory-False Memory Expert Witness testimony, no Frye hearings, no exposure of Shubin-Therapist mis-practices, no discussion of the relevant science-history, failure to fully expose of Shubin-Therapist mis-practices, no discussion of the relevant science-history, failure to fully expose the abusive, improper interviewing scheme of Inv. Leiter as discussed in his recorded statements etc. and many other errors as listed in this report),

- iv. Politicians and allies (Corbett/Kelley/Fina desired to “get” and “remove” Corbett’s most persuasive and powerful political foes in his efforts to radically defund PSU with a 50% reduced budget. The most persuasive foes to Corbett’s plan to provide “half the previous budget” were PSU President Graham Spanier and Coach Joe Paterno – both were removed rapidly in the apparently pre-planned media frenzy resulting from this case.)
- v. Outsiders (the negligent Freeh Group Report investigators apparently failed to even record interviews (!) – a sign of Negligence or corruption the Freeh Groups Report investigators apparently failed to disclose secret collusion with AG prosecutors including Fina when an “independent” investigation had been promised and paid for with \$8 MILLION dollars resulting in just “opinion”, the negligent Freeh Group Report investigators reportedly failed to even interview key witness some were not interviewed reportedly upon instructions from the FINA/AG office).

- e. The defendant is innocent, and the victim of one of the most

improper, corrupt, falsely investigated and improperly, negligently tried cases in US history;

- f. Other hypotheses as they become available.

(Exhibit “A”, pages 72-74)

**V. DR. BARDEN’S REPORT: THE OFF THE RECORD HILTON GARDEN INN MEETING PRODUCING A “LIKELY-CONVICTION-DEATH-MARCH” TRIAL SCHEDULE THAT PRECLUDED ANY CHANCE OF A FAIR TRIAL**

71. If there is any single factor that brought about to the legion of prejudicial errors that led to the ultimate injustice in the Sandusky case it was the speed with which the matter was rushed to trial.

72. Dr. Barden notes that even highly specialized experts in such cases COULD NOT properly prepare and try such a complex case on the “likely-conviction-death-march” schedule set by Judge Cleland at his reportedly “secret-off-the-record”, unrecorded apparently improper meeting at the Hilton Garden Inn with Prosecutor Frank Fina and defense lawyer Joe Amendola. (Exhibit “A”, page 101)

73. Thus, while the defense can hypothesize about the need for legitimate expert testimony in the trial, Judge Cleland’s “death march” would have made that impossible.

74. Considering,

- the magnitude of the Sandusky case and its collateral cases (Spanier, Curley, and Schultz);
- the impact on Penn State, one of America's finest land grant institutions;
- the millions of dollars paid out by Penn State in settlements which are now highly suspect;
- the millions of dollars paid for the highly questionable Freeh investigation;
- the millions of dollars at stake in the event that the NCAA had imposed its misguided sanctions on Penn State;
- the ruined lives and imprisonment of prominent, decent, and innocent citizens;
- and the imprisonment of an innocent man for probably the rest of his life.

the secret-off-the-record Hilton Garden Inn meeting must go down as one of the most significant, and potentially corrupt, events in the history of American Jurisprudence.

#### **A. Disclosure of the Hilton Garden Inn Meeting**

75. On May 2, 2016, the Trial Court, Judge John M. Cleland, met with counsel in chambers and informed them that he was present at a meeting that took place the night before the Defendant's December 13, 2011 Preliminary Hearing.

76. The following day the Court electronically delivered to counsel a photocopy of notes he had made the evening of the meeting.

77. The disclosure of the meeting was made with reference to Issue 11 in the Second Amended PCRA Petition filed by the Defendant on March 7, 2016.

78. No reason was given by the Trial Court concerning why he had not disclosed his attendance at the meeting until May 6, 2015 for a period of nearly 4 and ½ years.

79. On May 9, 2016 Counsel for the Defendant filed a motion requesting that the Court recuse itself because the Trial Court was a witness to certain events that underly the PCRA claim that trial counsel rendered ineffective assistance of counsel when he waived the Defendant's Preliminary Hearing. A copy of this motion is attached as Exhibit "H".

80. On May 10, 2016, the Trial Judge, the Honorable John M. Cleland issued a memorandum and order denying the Defendant's motion for Recusal.

## **B. The Substance of the Off the Record Hilton Garden Inn Meeting**

81. As far as counsel is aware, there was no record made of the proceedings on December 12, 2011.

82. Nonetheless, in Judge Cleland's Memorandum and Order of May 10, 2016 he gave the following information:

On the evening of December 12<sup>th</sup> I was eating dinner at the Hilton Garden Inn in State College when I was notified that counsel for the prosecution and defense

wanted to come to the hotel to meet with me and Judge Scott, who was also staying at the hotel. Arrangements were made to meet in a hotel conference room.

According to the notes I took that night, and which were given to defense counsel and are attached to the Defendant's motion, present at the meeting were Attorneys Joseph Amendola, Jonelle Eshbach, Joseph McGettigan, Judge Scott, and me.

At some point after the meeting had been requested, but before the meeting convened, I was surprised to learn that the purpose of the meeting was to discuss the possible waiver of the preliminary hearing. Since the case had not yet been bound over to court, Judge Scott had the responsibility for conducting the meeting and I attended for the purpose of addressing any administrative issues that might arise.

At the meeting Mr. Amendola explained he had approached the prosecutors about waiving the preliminary hearing if there was an agreement that the Commonwealth would not seek an increase in bail even if new charges were filed. Mr. Amendola said the Defendant feared he would not be able to meet any increased bail amount and that he would be incarcerated pending trial. Counsel stated they had reached an agreement that the Defendant would waive the preliminary hearing; that the Commonwealth would not request an increase in bail; that the Defendant would remain on house arrest with electronic monitoring, but be able to leave for legal and medical appointments and to attend church; and that if new charges were filed, then the defendant would be permitted to turn himself

in, and bail conditions would remain the same.

It was then agreed that the Defendant would be present in court the following morning for the preliminary hearing as scheduled and that Judge Scott would conduct a hearing waiver colloquy.

83. In an Affidavit filed with this Court May 11, 2020, Joe Amendola put down his recollections with regard to the issue concerning the waiver of the preliminary hearing<sup>2</sup>. They are as follows:

One of the issues raised by current counsel was my attendance at a meeting at the Hilton Garden Inn the night before Mr. Sandusky's preliminary hearing. To the best of my recollection, this meeting was attended by representatives from the Attorney General's Office, the Magisterial District Judge presiding over Mr. Sandusky's preliminary hearing and the trial court. I recollect there were other individuals there, but I do not recall for certain at this time whom they were.

To the best of my recollection, I was informed of the meeting by either Joseph McGettigan, Esquire and/or Frank Fina, Esquire, both representatives from the Attorney General's Office.

The prosecutors and I, at my initiation, had discussed and finally agreed that, if Mr. Sandusky waived his preliminary hearing, the Attorney General's Office would not seek any increase in Mr. Sandusky's bail prior to trial even if additional charges were filed against him following his preliminary hearing. I discussed this issue with Mr. Sandusky prior to the meeting at the Hilton

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<sup>2</sup> The affidavit of Joe Amendola is unsigned due to covid restrictions in place at the time.

Garden Inn, and he agreed to waive his preliminary hearing based upon the prosecutors' representation that they would not seek additional bail if additional charges were filed against Mr. Sandusky. I also explained to Mr. Sandusky that, although we would have the opportunity to cross-examine Commonwealth witnesses at the preliminary hearing, the hearing would likely produce very negative information alleged by the Commonwealth which would be reported extensively by the media nationwide.

I was acutely mindful that the Attorney General's Office had strongly advocated substantial bail (seven figures) when two additional sets of charges were filed against Mr. Sandusky by the Attorney General's Office following his initial arraignment on the original eight (8) sets of charges. It was clear the Attorney General's representatives wanted bail set high enough so that Mr. Sandusky would be incarcerated prior to trial. Mr. Sandusky and I, in our discussions prior to the waiver of his preliminary hearing and prior to the meeting at the Hilton Garden Inn, had concluded it was vitally important for Mr. Sandusky to remain free on bail to assist me and experts including investigators, psychiatrists and jury consultants, as well as to provide critical background information, in the preparation of his defense. It would have been extremely difficult for Mr. Sandusky to adequately assist me and these other individuals in the preparation of his defense if he was incarcerated prior to trial.

I attended the meeting in early December 2011 at the Hilton Garden Inn in part to confirm that, in return for waiving Mr. Sandusky's preliminary hearing, the Attorney General's representatives would not seek an increase in bail prior to trial even if additional charges were filed against Mr. Sandusky, which was a significant possibility

at the time.

Again, I recall that Attorney General representatives at this meeting at the Hilton Garden Inn included Joseph McGettigan, Esquire and Frank Fina, Esquire. I also recall the Magisterial District Judge was present, along with the trial judge. I recall there were other individuals present at this meeting, although I cannot recall at this time the names of those individuals.

84. Despite whatever issue existed concerning the Judge's attendance at a meeting concerning a waiver of a preliminary hearing, there was, by both accounts, another matter discussed – the trial date.

85. In his opinion of May 10, 2016, Judge Cleland on page 4 made reference to the trial date. More specifically:

“ At that point, I then held a brief discussion regarding next steps, including whether the defendant intended to waive arraignment, proceeding with discovery and possible trial dates.

86. Attorney Amendola also recollects that the trial date was discussed. More specifically:

It is my recollection, at this meeting, the trial judge initially suggested a trial date in March or April. It is also my recollection that the trial judge, after I suggested that March or April would present a problem for properly preparing for Mr. Sandusky's case, then suggested a trial date in May. It is my further recollection that, subsequently, following a request from the grand jury judge, the trial court

provided the grand jury judge with a two-week additional period to review grand jury testimony to determine what grand jury materials the grand jury judge would provide to me. This two-week period pushed the commencement of Mr. Sandusky's trial back to early June.

(Exhibit "I", page 11-12)

87. The photocopy of Judge Cleland's notes that he made on the evening of the off-the-record meeting are attached hereto as Exhibit "J".

88. Reference is made in those notes to a trial date in June or July.

89. At the bottom of the document are these notes:

"The March murder trial" – June-July 2-3 weeks"

**C. How Hard and Fast was the Court's Trial Date, Apparently set at the December 12, 2011 Meeting?; the Failure of the Defense to Call Expert Witnesses in the Context of the PCRA Hearing; Brady Revisited; and Newly Discovered Evidence-the Issue regarding the Necessity of a "Cooling Off Period"**

90. On October 18, 2017 the Honorable Judge Foradora issued an opinion on the Defendant's original PCRA Petition. Portions of this Opinion are attached hereto and marked as Exhibit "K".

91. The Defendant alleged in the original PCRA Petition that the Commonwealth violated *Brady v. Maryland*, 373 U.S. 83 by failing to disclose that some of the victims' memories had been recovered through repressed memory

therapy, which information, he says, was otherwise unlearnable because of the doctor-patient privilege. (Exhibit “K”, page 3)

92. Of course, the *Brady* violation on the part of the Commonwealth was not regarding doctor-patient privilege, it dealt with the Commonwealth’s failure to disclose that the witnesses, particularly those provided by Attorney Shubin, had radically changed their testimony from the time they were originally interviewed by the police and by the time of their testimony at trial suggesting that they had, through therapy or numerous interviews with their attorneys, remembered things that they had not remembered before.

93. Judge Foradora notes, “In this instant, there is no question that the victim’s late revelations, were used for impeachment purposes, or that the Commonwealth failed to disclose them.” Judge Foradora stated in his opinion:

“Proving a *Brady* violation is a tripartite proposition. The defendant must establish that the evidence at issue was either exculpatory or could have been used to impeach a witness, that is was deliberately or inadvertently suppressed by the Commonwealth, and that he suffered prejudice because of it. *Commonwealth v. Paddy*, 15 A/3d 431, 450 (Pa. 2011). Prejudice results when the suppressed evidence was material, meaning that there is a reasonable probability that the result of the proceeding would have been different had it been provided to the defense.

(Exhibit “K”, page 4)

94. Of course, it is the position of Dr. Barden that there is a significant

probability that the result of the proceeding would have been different had this information been provided to the defense *and* the defense provided expert testimony to the jury concerning Recovered Repressed Memory.

95. Judge Foradora did not address this issue by stating that this was not Recovered Repressed Memory because of the testimony of Michael Gillum and one of the victims, in spite of the fact that the overwhelming evidence was that this was a classic example of Recovered Repressed Memory.

96. Of course, it is “fanciful”, as Judge Foradora put it, to expect that counsel could have provided an expert witness based on the schedule set by Judge Cleland which will be established by the next section of this motion.

97. One of the issues originally raised by the Defendant in the original PCRA proceedings was the need for a “cooling off” period due to the excessive, prejudicial, pervasive media coverage concerning the case.

98. The Trial Court, per the Honorable John M. Cleland declined to take testimony on this subject.

99. At the hearing regarding the issue of restitution held on May 17, 2022, the Commonwealth called Sheriff Bryan Sampsel to testify about why costs were necessary.

100. For the first time this Court received testimony concerning the

atmosphere of the Defendant's trial in June of 2012.

101. Attached hereto and marked as Exhibit "L" is a transcript of the cross-examination of Sheriff Sampsel concerning these issues.

BY ATTORNEY LINDSAY:

- Q. Sheriff Sampsel, I think you would agree that there's never been anything like this to anybody's knowledge in Centre County; correct?
- A. I would say within the state too. I mean it was a pretty big trial. So no, nothing like this in Centre County ever before.
- Q. Your testimony is as far as you know there's never been anything like this in the state; is that correct?
- A. Well, I think the Crosby trial was as big, but up until that point I think ours was the biggest trial we ever had with that much news media present in one area.
- Q. I think you indicated that as far as - - well, first of all, you indicated that you had 20 to 25 deputies assigned to work this particular situation?
- A. I didn't. I didn't assign them, so I was one of them. I was one of the many. Right now I have a staff of around 30 but that number fluctuates when someone retires or quits or moves on, so I'm taking a rough guess, 15 to 20 every day. I'm probably leaning more towards 20 because we needed people everywhere.
- Q. Why?
- A. There was so much tension about it. I mean you had people who were on both sides of the aisle who didn't believe Jerry

did it, who believed Jerry did it, and they were pretty hostile, some of them.

Q. This is in the courtroom itself?

A. Just monitoring social media and the intel we were getting that it was a hot-button issue. I mean you had Joe Paterno, who was fired and terminated, and it was just -- there was a lot of angst here in Centre County.

Q. I think you use the expression, I'm not sure if I got the word right, but as far as being in the courtroom itself it was scary; is that what you said?

A. No, I didn't use that word.

Q. What did you use; I don't remember?

A. I wasn't in the courtroom much at all during the trial at all. I said there were probably -- there was factions that you had to watch who were angry about different things, and we had some intel on some people we watched and kept an eye on them, on both sides.

Q. You indicated that there were 300 to 400 people outside; is that what you said?

A. I would guess probably 300, 300 to 400. During verdict night, towards the end of the trial, there was probably more. I mean it was packed; this whole area was packed. I didn't count the people. But during a normal day throughout the trial, there was probably 250 to 300 people just inside -- 250 maybe, 230, somewhere around there, inside the courtroom, so I'm just imagining how many more people were standing out here waiting because you had news crews. People knew the verdict was coming. People dumped into this area.

- Q. When you say that they were outside, you mean standing here the whole day?
- A. All day, tents. There was 20 pop-up tents around, 30 or 40 satellite trucks. There was news media everywhere. They used this room above here for a satellite room for another room for credentialed media. So there was 85 news media inside the courtroom and offered up to a hundred spots over here. So in any given day, there could've been 350 people here.
- Q. When you brought the jury in, --
- A. Yes.
- Q. - - - you brought them in on a bus I take it?
- A. I drove in a cruiser behind them and followed them in to make sure no one interacted, no one tried to stop them, no one got --- just no one got in there way; I made sure they go there safely.
- Q. Where did you drop them off?
- A. On the downhill side of the courthouse.
- Q. The what?
- A. On the downhill side of the courthouse in the middle, there's a door that's alarmed all the time. We had someone --- we had to have that stationed as well because they had to disarm it every day and bring the jurors in, and then we armed it back, and they stayed there.
- Q. All right. Were there people in the vicinity of that door when you brought the jurors through?
- A. Yeah, we stopped --- we stopped traffic. We had deputies walk up and keep people back so they couldn't take pictures of the

jurors.

Q. Was there a crowd there that was pushed back as the jurors ---?

A. I don't remember that. There were people trying to get pictures. We kept them down pretty much at the bottom of the hill into the top of the --- or behind the courthouse we blocked that road off at that point.

Q. You indicated, I believe, on Cross Examination that as the trial went on the crowd actually increased; is that correct?

A. Yes. Towards --- I wouldn't say --- the last night when they knew the verdict was getting close and they're doing testimony, I think they --- think things were getting close to the end and started getting more people here, yes. That's my best recollection.

Q. Would it be fair to say there were - - if there were 300 or 400 regularly, there were thousands?

A. No, wasn't thousands. Maybe 300 to 500 then for the night of the jury - - or of the verdict. I mean you got - - they had people everywhere. I mean this was the craziest thing I'd ever seen in my life and probably will ever see hopefully. Don't hope to see that again because it was busy times, and I've never seen anything like it to be honest with you.

Q. Can you tell me exactly why you thought it was the craziest thing you've ever seen?

A. I've just never saw media from all over the county. I mean I talked to CNN, Fox News, just people from all over. People you see on TV that are not stationed here. You know, we were getting news people from New York, from California, Texas, I mean they were from everywhere. And I would meet them because I was helping check people in the doors and stuff, you

know, just some friendly conversations, where are you from, blah, blah, blah, so it was -- like it said it was the craziest thing I've ever been a part of.

#### **D. Judge Foradora’s Take on Judge Cleland’s “No-Nonsense” Approach to Delaying the Trial**

102. In the original PCRA proceeding, PCRA counsel took the position that trial counsel, Joseph Amendola was ineffective for failing to file a motion to continue the trial until there had been a longer cooling off period. Judge Foradora stated the following:

Trial counsel was familiar with the “cooling-off” concept, Ans. To Mot. for Change of Venue/Venire, 02/28/2012, ¶ 10, as well as the relevant case law. Def. Memo. in Opp., 02/08/2012. It thus was not out of ignorance that he neglected to raise the issue, but because he felt certain that it would be to no avail. As he unhesitatingly explained at the PCRA hearing when asked whether he had requested a continuance based on the need for a cooling-off period, “I did not. And the reason I didn’t, quite frankly, was because if we weren’t getting continuances on all the other legitimate reasons that we had, we certainly weren’t going to get it on that basis.” (PCRA, p. 58). Based on his many interactions with Judge Cleland, he was certain that such a request would have been denied on the basis that the jury selection process itself would reveal whether media saturation had in fact unduly prejudiced the jury pool. (Id. at 58-59). That was a reasonable assumption.

As the record amply reflects, Judge Cleland took a no-nonsense approach from start to finish with respect to the management of these cases and was not inclined to delay

the trial unless he deemed it to be absolutely necessary. He deemed it unnecessary, though, when Amendola learned just a month before jury selection that his jury consultant would be unavailable in June; when expert witnesses counsel expected to retain could not accommodate a June trial; when potentially exculpatory lay-witnesses were unavailable while defending their own criminal charges; and when defense counsel received thousands of pages of discovery materials not long before jury selection was scheduled to commence. See e.g., Mot. For Cont., 05/25/2012, pp. 8-9; (Transcript (Mot. For Cont.) (Under Seal), 05/29/2012). Nor was Judge Cleland persuaded to continue the trial when counsel, purporting to feel overwhelmed by existing developments, sought leave to withdraw from the case. See Mot. To Withdraw, 06/05/212, (Mot. To Withdraw Transcript, 06/05/2012). In the midst of counsel's impassioned speech regarding his inability to adequately try the case, in fact, Judge Cleland announced, "This case has been on track for this trial date since at least January. It's no surprise to anybody. I never ever suggested or made any indication that there would be a continuance, except as requested by Judge Feudale and as a courtesy to him. I have never, I do not believe, misled or given any indication that I had any intention of scheduling this case except when it was scheduled and we're going to proceed." (Id. at 7).

In light of the foregoing, it is fanciful to suppose that Judge Cleland would have granted a continuance based on the allegation that a cooling-off period was necessary. In light of his position on the necessity of a jury consultant, moreover, it is fanciful to suppose that an expert report, even one indicating significant community bias against Sandusky, would have convinced him that the traditional voir dire process could be inadequate to weed out biased venire persons.

(Exhibit “K” page 1-2)

103. In light of the foregoing it’s “fanciful” indeed to suppose that Judge Cleland would have granted a continuance based on the allegation that a “cooling off” period was necessary.

104. Based on the foregoing it is obvious that Mr. Amendola KNEW there would be no continuance likely based on what he learned at the off-the-record Hilton Garden Inn meeting on December 12, 2011.

105. Based on the foregoing, it was clear that Judge Cleland’s setting of the trial date, at least prior to January of 2012 was hard and fast indeed and that, with regard to the trial schedule, Judge Cleland was clearly on, as Dr. Barden put it, a “death march”.

106. Obviously Judge Foradora was looking at this solely from an ineffective assistance of counsel perspective and was ignoring what a profound due process question existed because of Judge Cleland’s “death march”.

#### **E. The Controversy over Footnote #9**

107. On November 14, 2016 counsel for the Defendant filed a “Brief on Evidentiary Issues”.

108. On page 26 of that brief, there was a footnote related to the “unprecedented off the record meeting at a hotel conference room in which the

trial court, district magistrate, Commonwealth and Mr. Amendola, but not Mr. Sandusky were present, involved negotiations to waive a critical stage of the criminal proceedings”.

109. Footnote #9 was as follows:

Upon learning of the trial judge’s participation in an off-the-record night time meeting that took part at a hotel regarding discussions to waive Mr. Sandusky’s preliminary hearing, and because Mr. Sandusky had alleged that trial counsel performed ineffectively in waiving that proceeding, Mr. Sandusky requested that the PCRA court recuse itself because it had a conflict due to being a fact witness. The Commonwealth took no official record based position.

The PCRA court, in its opinion in support of its order denying recusal, cited one portion of the Pennsylvania Code of Judicial Conduct. Specifically, the PCRA court recognized that, “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has...personal knowledge of facts that are in dispute in the proceeding.” PCRA Court Recusal Opinion, 5/10/16, at 6. However, the PCRA court did not mention nor discuss other relevant provisions of the Code of Judicial Conduct.

Rule 2.11(A)(2)(d) provides that a judge shall disqualify himself if, “The judge knows that the judge . . . is: likely to be a material witness in the proceeding.”

That proviso does not limit a judge from disqualifying himself because other material witnesses exist. In this respect, no Pennsylvania case law or authority was provided by the PCRA court regarding a judge only having to recuse in a situation if he or she is the single source of information or only if the facts are disputed. Similarly, Rule 2.11(A)(6)(c) reads that a judge shall disqualify himself if he “was a material witness concerning the matter.”

Moreover, an aspect of the standard for recusal is whether a significant minority of the lay community could reasonably question the court’s impartiality. *See Commonwealth v. Darush*, 459 A.2d 727, 729 (Pa. 1983); *Goodheart v. Casey*, 565 A.2d 757 (Pa. 1989); *In re McFall*, 533 Pa. 24, 617 A.2d 707 (1992); *Commonwealth v. Bryant*, 476 A.2d 422, 426 (Pa. Super. 1984); *see also Lomas v. Kravitz*, 130 A.3d 107 (Pa. Super. 2015) (*en banc*) (OISR) (collecting cases). Based on the rules of judicial conduct, stating that a judge shall disqualify himself when it is likely that he is a material witness or was a material witness, it is beyond cavil that a significant minority of the lay community could reasonably question the court’s impartiality where he has acknowledged being a fact witness and took part in, or at the very least was present for a non-record negotiation involving an agreement to waive Mr. Sandusky’s preliminary hearing.

Finally, if this off-the-record hotel meeting were somehow considered a judicial proceeding, Mr. Sandusky was not present and did not waive his presence at that critical stage of the proceedings. Thus,

his due process rights were violated.

110. On November 15, 2016, the Trial Judge, the Honorable John M. Cleland issued the following order:

AND NOW, November 15, 2016, upon consideration of the defendant's Brief on Evidentiary Hearing Issues, it is ordered as follows:

That on or before 10 a.m. November 17, 2016, counsel for the defendant shall either notify me of their intent to call me as a material witness regarding a meeting at the Hilton Garden Inn the evening before the defendant's preliminary hearing, or formally withdraw footnote 9 on page 26 and any argument related thereto.

111. On November 16, 2016, counsel for Mr. Sandusky filed a response to Judge Cleland's order which included the following entries:

1. On November 15, 2016, the PCRA court issued an Order stating that, "counsel for the defendant shall either notify me of their intent to call me as a material witness regarding a meeting at the Hilton Garden Inn the evening before the defendant's preliminary hearing, or formally withdraw footnote 9 on page 26 and any argument related thereto."
2. This Order provided counsel until 10 a.m. on November 17, 2016, to respond, but did not specify that the response be filed. Accordingly, a draft of this Response was provided to the Court and the Office of Attorney General via e-mail

prior to that time to comply with the Order. Because that response was not of record, this Response was sent for filing.

3. Counsel formally provides notice that they will not withdraw footnote 9 on page 26 and the argument forwarded therein, as that could be construed as waiving the recusal issue for purposes of appeal.
4. Further, Pa.R.E. 605 precludes counsel from calling as a witness a judge in a proceeding over which the Court is presiding. That Rule provides, "The presiding judge may not testify as a witness at the trial or other proceeding." Pa.R.E. 605.
5. Hence, so long as the PCRA court continues to preside over the PCRA proceeding, Mr. Lindsay and Mr. Salemme are precluded from calling this Honorable Court as a witness.
6. By way of further response, the issue is not solely whether PCRA counsel would be able to call this Honorable Court as a witness, but whether the Court is in fact a witness. This is because the Court is required to make findings of fact, credibility determinations, and conclusions of law based on an event for which it was a witness and there is the possibility that such determinations would not necessarily be based exclusively on the evidence of record, but on an independent recollection of the event. Cf. Brannam v. Reedy, 906 A.2d 635, 640 (Pa. Cmwlth. 2006) ("it was error for the trial court to base facts upon the judge's personal experience rather than upon the testimony of witnesses.").

When a judge begins to defend or explain conduct on a factual basis, an objection and recusal motion must be raised. See *id.* at 642.

112. On November 18, 2016, Judge Cleland issued an Opinion and Order.

Significantly the Court initiated highly critical opinion by stating the following:

The defendant's attorneys have impugned the competence and integrity of essentially everyone associated with the grand jury's investigation into the defendant's conduct, the defendant's trial and conviction, and these post-conviction proceedings. Now they have chosen to impugn the integrity of the court itself.

These collective accusations directed at attorneys, judges, jurors, investigators and victims, based on what can only be characterized as diaphanous evidence, is a form of advocacy that transcends the traditional boundaries of an honored profession. Such advocacy should not be permitted by courts, and should merit the attention of the Disciplinary Board.

113. The Court's order does not suggest that any of the allegations concerning the competence and integrity of other people involved in the case are not true or without a factual basis. Nor does the court state what there has been in the conduct of Mr. Sandusky's counsel which should merit the attention of the Disciplinary Board.

114. Put differently, what specific ethical charge or charges are leveled against counsel?

115. To counsel's knowledge there has never been any investigation by the Disciplinary Board into Mr. Sandusky's lawyers' conduct.

116. Counsel is unaware of any complaint filed with the Disciplinary Board concerning counsels' conduct.

117. Apparently Judge Cleland took it upon himself to level a very serious charge against Mr. Sandusky's lawyers, publish his bald allegation in an Opinion which was transmitted throughout the state. But, declining to file a complaint with the Disciplinary Board denied counsel an opportunity to defend everything counsel has done in this case.

118. It is apparent that the Honorable Judge John M. Cleland's position is that, an attorney who merely questions the propriety of the Court's conduct should be subject to discipline by the Disciplinary Board.

119. In his Opinion and Order of November 18, 2016, Judge Cleland indicates he is recusing himself from presiding from any further proceedings in the case, but, as it turns out, not exactly.

120. Apparently Judge Cleland felt impelled to make one last post script at Mr. Sandusky's expense as in footnote number 3 he states the following

In my view, having studied all 34 issued raised by the petition and the applicable law, no grounds raised in the petition merit relief. Counsel in their

brief engages in unwarranted speculation about the grounds on which I previously denied Issue 6.

121. It is obvious from reading footnote 3 that the Honorable John M. Cleland, while recusing himself was leaving instructions to whomever his successor was concerning what that judge's ruling should be.

#### **F. Questions Raised Concerning the Hilton Garden Inn Meeting**

122. WHY would a trial judge conduct, or at least attend, an off the record meeting dealing with, among other things, the scheduling of a trial date prior to the preliminary hearing?

123. WHY would a trial judge discuss an arraignment date before the preliminary hearing?

124. WHY would a trial judge, as Dr. Barden puts it, put the case on a "death march" to trial in a matter of this magnitude.

#### **VI. DR. BARDEN'S INVESTIGATIVE HYPOTHESIS – WAS THE SECRET HILTON GARDEN INN MOTEL THE RESULT OF THE NEED FOR A QUICK CONVICTION OF THE DEFENDANT SANDUSKY TO MAKE POSSIBLE A SETTLEMENT BETWEEN THE NCAA AND PENN STATE TO AVOID THE THREATENED "DEATH PENALTY" OF THE**

## **PENN STATE FOOTBALL PROGRAM**

125. On page 73 of his report, Dr. Barden raises the question of whether there was a Cleland-Fina-Amendola agreement entered into apparently to hide the secret Hilton Garden Motel meeting to quickly convict the defendant and thus prevent \$500 million in damages to the local economy from the looming, threatened NCAA “death penalty” for Penn State football? (Exhibit “A”, page 73)

126. The above questions, why would Judge Cleland meet in a motel the night before a preliminary hearing and set a trial schedule to which he would so rigidly adhere to on what Dr. Barden calls a “death march”?

127. There has never been an explanation by any of the participants in the meeting, that is, Judge Cleland, Fina, Amendola, Magistrate Judge Scott, McGettigan.

128. There can be only one logical explanation and that is, to avoid a catastrophic loss of revenue to Penn State.

### **A. The Significance of the trial date in the negotiations between the NCAA and Penn State University**

129. The “Report to the Board of Trustees of the Pennsylvania State

University” submitted on June 29, 2018 on the part of seven members of the Pennsylvania State University Board of Trustees stated under “Freeh Report used by NCAA”:

Less than two weeks after the release of the Freeh Report, Mark Emmert, NCAA President, and Rodney Erickson, then Penn State President, signed the “Consent Decree” that imposed sanctions on the Penn State football program. The sanctions, so harsh that they were described as “unprecedented,” included a \$60 million fine, post-season ban, vacated wins, and loss of scholarship. Critics immediately questioned the NCAA’s authority to levy such sanctions in a criminal matter and accused the NCAA of capitalizing on an opportunity to enhance its own reputation at the expense of a member institution historically known for exceptional ethical conduct.

The Consent Decree justified the NCAA’s use of the Freeh Report in lieu of its own investigative procedures by stating that “The University” had commissioned “the independent FSS investigations,” and stated that I could rely on “the findings of a Criminal Jury and the Freeh Report (as a) .... factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and By-Laws.” The Consent Decree further stated that it could rely on the Freeh Report “(i)n light of .... The University’s willingness, for purposes of this resolution, to accept the Freeh Report.”

130. As stated, “the findings of a criminal jury” was a significant part of the factual basis for the agreement between Penn State and the NCAA, which averted the “death penalty” for Penn State Football.

131. If the conviction of Mr. Sandusky had not yet occurred, there would have been no Freeh Report.

132. If there had been no report of the Freeh Group, there would have been no agreement between Penn State and the NCAA.

133. If there was no agreement between the NCAA and Penn State University, there would have been no football season in the fall of 2012 and likely for many seasons thereafter. There would have been millions and perhaps billions of dollars lost from television revenue, ticket sales, various collateral sales such as paraphernalia and apparel and most important, loss of the Penn State “brand”. Put differently, the loss would have been incalculable.

## **B. Significant Timing of Events**

134. On November 5, 2011 the Defendant Gerald Sandusky was charged with various offenses.

135. On November 21, 2011 Penn State University announced it had hired Louis Freeh to investigate the sexual abuse allegations.

136. On December 12, 2011 an off-the-record meeting took place at the Hilton Garden Inn involving individuals who were to be participants of the trial, including the presiding judge at the Common Pleas trial.

137. On December 13, 2011 a preliminary hearing was waived by the Defendant pursuant to an agreement reached the night before at the off-the-record meeting at the Hilton Garden Inn.

138. On February 29, 2012 Joseph Amendola on behalf of the Defendant Gerald Sandusky requested a two-month trial delay which was denied by the trial judge, the Honorable John M. Cleland.

139. On June 5, 2012 defense counsel Joseph Amendola and Karl Rominger moved to withdraw as counsel stating to the Court, “I feel that we are duty bound ethically to tell the court we are not prepared to go to trial at this time . . . so we feel compelled to file this motion, again, fully cognizant that the court will deny but at least there will be a record.”

140. Defense counsel’s motion to withdraw due to inability to effectively represent the Defendant was denied by the trial court.

141. On June 22, 2012 a jury verdict was reached, finding the Defendant guilty of various charges.

142. On July 12, 2012 the Freeh investigation issued a report condemning Penn State university in its handling of child abuse allegations.

143. Less than two weeks later, on July 23, 2012 Mark Emmert, NCAA President and Rodney Erickson, then Penn State President, signed a “Consent Decree” that imposed sanctions on the Penn State football program.

144. The consent degree justified the NCAA’s use of the Freeh Report in lieu of its own investigative procedures by stating that “the University” had

commissioned the “independent FSS Investigation” and stated that it could rely on “the findings of a criminal jury and the Freeh Report as a . . . . Factual basis from which the NCAA concludes that Penn State breached the standards expected by the articulated in the NCAA Constitution and By-laws.”

145. Finally, and perhaps most important, on July 24, 2012, NCAA President Mark Emmert said he and the executive committee decided against imposing a suspension of play, the so-called “death penalty”, on Penn State following the child sex abuse scandal, because “it was too blunt an instrument.”

## **VI. DR. BARDEN’S OTHER INVESTIGATIVE HYPOTHESES TO BE EXAMINED IN A HEARING**

146. In his report Dr. Barden suggests other investigative hypotheses to be examined and provide support in his report for these.

### **A. Was the Investigation and Prosecution of Jerry Sandusky Part of the Desire for Governor Corbett to “get Graham Spanier and Coach Paterno”?**

147. Politicians and allies (Corbett/Kelley/Fina desired to “get” and “remove” Corbett’s most persuasive and powerful political foes in his efforts to radically defund PSU with a 50% reduced budget. The most persuasive foes to Corbett’s plan to provide “half the previous budget” were PSU President Graham Spanier and Coach Joe Paterno – both were removed rapidly in the apparently pre-

planned media frenzy resulting from this case.) (Exhibit “A”, page 73)

**B. Was there Secret Collusion Between the Freeh Group, the Attorney General and the NCAA**

148. Dr. Barden states this - Outsiders (the negligent Freeh Group Report investigators apparently failed to even record interviews (!) – a sign of Negligence or corruption the Freeh Groups Report investigators apparently failed to disclose secret collusion with AG prosecutors including Fina when an “independent” investigation had been promised and paid for with \$8 MILLION dollars resulting in just “opinion”, the negligent Freeh Group Report investigators reportedly failed to even interview key witness some were not interviewed reportedly upon instructions from the FINA/AG office). (Exhibit “A”, page 73)

**VII. MOTION FOR EVIDENTIARY HEARING**

149. Based on the foregoing, there are factual issues to be resolved with respect to the many claims for relief articulated above, and the Defendant respectfully requests that this matter be set for a hearing on these issues.

150. At that hearing the Defendant anticipates presenting witnesses set forth in the following list of potential witnesses:

a. R. Christopher Barden, Ph.D., JD

It is expected that Dr. Barden will testify concerning the contents of his report which is attached hereto as Exhibit "A".

b. Attorney Andrew Shubin  
310 S Burrowes St, State College, PA 16801

It is expected that Attorney Shubin will be questioned concerning his interaction with the witnesses named in Dr. Barden's report, therapist Cynthia MacNab, investigators named in Dr. Barden's report and prosecuting attorneys.

c. Therapist Cynthia MacNab  
229 West Foster Avenue  
State College, PA 16801

She will be questioned concerning therapy rendered to various victims as named in the Barden Report

d. Therapist Alycia Chambers  
229 West Foster Avenue  
State College, PA 16801

She will be questioned concerning therapy rendered to various victims as named in the Barden Report and questioned concerning they therapy given to ZK

e. Attorney Benjamin Androzzi  
4503 North Front Street  
Harrisburg, PA 17110

He will be questioned concerning his interactions with Investigator Leiter.

- f. ZK (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave and the testimony he gave at trial

- g. BH (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave and the testimony he gave at trial

- h. AJ Dillen  
219 Donna Avenue  
Bozeman, MT 39718

Will be questioned concerning his participation in the “sting operation” referenced in the Barden Report.

- i. The Honorable John M. Cleland  
McKean County Courthouse  
500 W. Main Street  
Smethport, PA 16749

It is anticipated that he will testify concerning his participation and the circumstances surrounding the off-the-record meeting referred to in the Defendant’s petition which occurred the night before the Defendant’s Preliminary Hearing at the State College Hilton Garden Inn.

He will be questioned concerning contact he may have

had with anyone concerning the aforementioned “death march” trial schedule.

j. Jerry Sandusky

He will testify as to all matters contained in Dr. Barden’s report

k. Attorney Joe Amendola

He will testify as to the contents of his Affidavit and the meeting held at the Hilton Garden Inn

l. Investigator Joseph Leiter, Retired PA State Police

He will be questioned concerning his investigation and testimony at trial

m. Postal Inspector M.J. Corricelli

He will be questioned concerning his investigation and testimony at trial

n. Special Investigator Anthony Sassano, Attorney General’s Office

He will be questioned concerning his investigation and testimony at trial

o. Retired District Magistrate Robert Scott

He will be questioned concerning the meeting at the Hilton Garden Inn

p. AM (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave

q. JS (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave and the testimony he gave at trial

r. DS (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave and the testimony he gave at trial

s. RR (name and address not provided pursuant to 42 Pa.C.S. §5988)

Will be questioned concerning the therapy received, the testimony he originally gave and the testimony he gave at trial

t.      Mark Emmert – NCAA

He will be questioned regarding the negotiations with Penn State regarding sanctions.

u.      Other witnesses as the matter develops

## **IX. CONCLUSION**

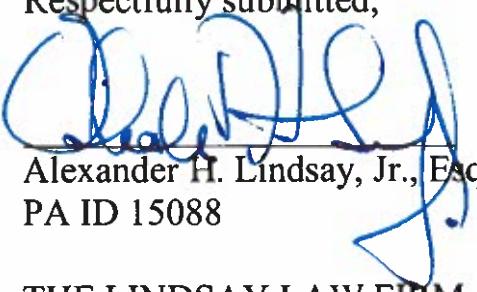
The Sandusky investigation and trial and their progeny, including the prosecution's of Dr. Graham Spanier, Timothy Curley and Gary Schultz, are the last gasp of a thoroughly discredited debunked concept known as Recovered Repressed Memory. It is the position of the Defendant that this pernicious concept should be exposed and put to rest once and for all.

Throughout this investigation, counsel for the Defendant has suggested that the Sandusky case is the worst thing that's happened in America since the Salem Witch Trials. There are similarities to the Salem Witch Trials in that people were questioned and questioned by interrogators who were anxious to hear tales of possession and sorcery and devilish activity to confirm their preconceptions. They were encouraged to "remember" imaginary events.

Of course the Sandusky case is far worse than the Salem Witch trials. The Sandusky case was prosecuted after 300 years of science had exposed the

nonsense of the conjuring up of imaginary memories. The Sandusky case involved the witnesses being paid millions of dollars. The Sandusky case involved a gullible media who have kept this atrocity alive, and most important, quite unlike the Salem Witch Trials, the Pennsylvania Judiciary seems quite unwilling to make reparations and search for the truth.

Respectfully submitted,



Alexander H. Lindsay, Jr., Esquire  
PA ID 15088

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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISON

COMMONWEALTH OF PENNSYLVANIA, :  
vs. : CP-14-CR-2421-2011  
: CP-14-CR-2422-2011  
GERALD A SANDUSKY :  
:  
\_\_\_\_\_

**EXPERT WITNESS REPORT OF R. CHRISTOPHER BARDEN, Ph.D., J.D.**

**I declare under penalty of perjury that this expert witness report is true and correct as filed and signed on Jan 18, 2023. (See, e-signature below). This expert witness investigative report was written under substantial time and cost restrictions but is offered in its current in-process form, drafted to the best of my knowledge at this time, with the expectation that it will assist the court in understanding several essential issues of science, methodology, history, and current, ongoing investigative hypotheses. There is much additional evidence I hope to review before updating this report in the months to come. Clearly, it would take years to review all relevant evidence in this very complex case. I am grateful to the court for providing extensions of time in 2022 to extend my review of as much evidence as possible in this time frame. My investigation of this complex case is continuing, and updates are expected.**

1. I, R. Christopher Barden, Ph.D., J.D., LP, a licensed psychologist ( MN and TX ) and licensed attorney (MN and many other states pro hac vice), have testified in and/or consulted on and/or reviewed and/or litigated cases in many jurisdictions (including NY, MA, ME, NJ, VA, NC, GA, FL, TX, NM, AZ, CA, OR, WA, ID, UT, CO, NE, SD, MN, IA, IN, IL, MI, AR, WI, and others) with regard to psychological and investigative issues similar to the issues in this case. I have consulted and/or testified as an expert in psychology, child psychology, psychopathology, psychotherapy standards of care and ethics (including social work, psychology, psychiatry, counseling, etc.), psychological testing-assessment, mental illness diagnostic issues, the science of coping-resilience, the nature and philosophy of science, history-methodology-standards of care in police investigations/interviews, the science of memory-memory contamination-false memory, the science of trauma-dissociation, the history of the "Memory Wars", the history of lawsuits and licensing revocation actions against "recovered repressed memory therapists", the history of abuse investigations, the reliability or unreliability of various

methodologies-investigative methods-procedures, as well as standards of care-licensing-ethical rules-history for mental health and psychotherapy professionals (psychologists-MSWs-Counselors-GALs-social workers-psychiatrists-MFTs-parenting consultants, forensic experts, expert witnesses, etc.) and related issues.

As an expert witness, I never offer opinions regarding the veracity of witnesses or the guilt or innocence of defendants. I will, however, offer multiple opinions regarding science, history, methodologies, practices, procedures, assumptions, ideologies, errors, and misconduct as documented on the records of this case as well as questions and investigative hypotheses for future investigations. As an experienced scientist, psychotherapist, and trial attorney I will offer opinions and hypotheses about the conduct of psychotherapists and investigators. I will also offer questions and investigative hypotheses about the conduct of legal professionals (judges, lawyers, and government officials) in this case. I will also offer general investigative hypotheses to assist future investigations of controversial, unexplored issues in this case.

In my opinion, the key role/task of an expert witness is to assist courts, attorneys, government officials, defendants, litigation parties, the media, and the public to ***understand and apply reliable*** scientific, technical, and investigative principles, hypotheses, methods, and information ***to protect the integrity of the legal system***. All opinions offered herein are to a reasonable degree of professional and scientific certainty. Alternative investigative hypotheses are offered to assist the process of investigating ongoing controversies in this case.

**2. EXPERT QUALIFICATIONS IN PSYCHOLOGY (RELEVANT SCIENTIFIC COMMUNITY) AND LAW:** I received a B.A. in child psychology from the internationally acclaimed Institute of Child Development at the University of Minnesota graduating Summa Cum Laude, Phi Beta Kappa and receiving the Distinguished Graduating Senior Award. I received my Ph.D. in clinical-child psychology from the University of Minnesota, an internationally acclaimed, American Psychological Association accredited, training program in clinical psychology. I received additional graduate and clinical training at the University of California, Berkeley and at the Palo Alto U. S. Veterans Administration/Stanford University Medical Center internship. I received several national fellowship awards from the United States National Institute of Mental Health. I am currently a licensed psychologist in the State of Minnesota and in the State of Texas. I have been in good standing in all jurisdictions where I have practiced as a psychologist, attorney, and/or expert witness and have never been disciplined in any way at any time. I have extensive clinical psychology experience in conducting psychotherapy and

assessments in medical, outpatient, forensic, correctional, educational, and inpatient settings working with a wide range of client populations including adults, children, adolescents, families, prison inmates, hospitalized inpatients, traumatized veterans, surgical patients, pediatric patients, traumatized prison inmates, traumatized survivors of the Pol Pot concentration camps, and other patient groups.

I've served on the Editorial Consulting Board of the official American Psychological Association journal for child psychology, Developmental Psychology. I've received two national research awards in child psychology and the psychology of coping and resilience from the Foundation for Child Development and the W.T. Grant Foundation. I've served as a Principal Investigator (the person responsible for the funds and validity-integrity of the research) on state, federal, and private research grants. I have published in, and/or served editing/review duties for several of the most highly regarded journals and texts in psychology, medicine and law including Developmental Psychology, Child Development, Psychological Bulletin, Ambulatory Pediatrics, Advances in Child Clinical Psychology, the Journal of Personality and Social Psychology, the Journal of the American Academy of Psychiatry and the Law, the Journal of Plastic and Reconstructive Surgery, the Harvard Journal of Law and Public Policy, and the Harvard Journal on Legislation.

I have given invited training addresses to the American Bar Association, the American Psychological Association, the American Psychiatric Association, the U.S. Surgeon General's Conference, the International Association of Plastic and Reconstructive Surgeons and other groups. I served a four-year term as a member of the Minnesota State Board of Psychology appointed by Minnesota Governor Arne Carlson. My national invited addresses have often focused on methodological and scientific problems in the mental health system. I have personally investigated — as an attorney, legal consultant, and/or as a psychological expert witness or consultant - hundreds of cases of negligence and malpractice by mental health professionals including cases of accurate, and/or tainted, and/or false memories. I have also been asked to consult with and/or train groups of law enforcement personnel — regarding the proper methodology for investigation and analysis of abuse cases — including the Midwest Sex Abuse Investigators Association meetings and other officials as well as F.B.I. agents, police officials, U.S. DOJ and Attorney's Office personnel and related professionals.

I served as a Special Assistant Attorney General for the State of Utah helping to enforce licensing rules and regulations, protect the public from junk science "therapies", and prosecute misconduct by mental health professionals. One of my main areas of concentration as a psychologist has been to ***protect the integrity of the mental health and legal systems and also protect vulnerable patients from***

*misleading junk science myths and unreliable methodologies in the psychotherapy/mental health industry* including but not limited to helping courts and professionals understand the methodology of reliable investigations, the science of human memory, the science of memory contamination ( including the risks of false memories induced by poorly trained psychotherapists and/or investigators ), the risks of improper-unreliable interviewing and psychotherapies, proper and improper uses of psychological testing, the risks of reliance upon “clinical judgment” methods, the well-documented limitations of professional expertise in all psychotherapy professions, the well-documented inability of psychotherapy professionals to reliably distinguish true from false patient reports in the absence of any corroborating evidence, ethical rules requiring psychotherapists and experts to fully, fairly, honestly, and accurately disclose to attorneys-patients-courts-officials the methodological limitations and risks of their methods/practices, the risks of missing-hidden and/or manipulated evidence, the risks of failing to generate and test alternative investigative hypotheses (avoiding confirmation bias), and other issues.

I received a law degree with honors (J.D., cum laude) from Harvard Law School as well as training in forensic psychology/psychiatry from the joint Program in Law and Psychiatry at the Harvard Law and Medical Schools. I served as Adjunct Professor of Law at the University of Minnesota Law School and at the Hamline University School of Law, teaching "Psychology, Psychiatry and the Law" at both institutions. I was admitted to the practice of law in Minnesota on October 23, 1992 (License #227316), admitted to practice before the United States District Court of Minnesota on November 18, 1992 and was admitted to Practice before the United States Court of Appeals for the Eighth Circuit on May 24, 1994. I have practiced in many jurisdictions via pro hac vice admission. I am, and have always been, in good standing in every jurisdiction in which I have practiced. As a trial attorney, I have litigated or consulted on many cases in many states over the past 30 years involving complex legal and mental health issues including exposing misconduct by psychotherapy professionals — social workers, psychiatrists, psychologists, counselors, etc. — including several complex Frye and Daubert-Kumho hearings excluding junk science methodologies including ***controversial, unproven, and inherently unreliable notions*** such as “recovered repressed memories”, “multiple personality disorder”, and “dissociative amnesia” ideologies and methods (**RRM-MPD-DISSL**) including the very controversial theory that that “buried memories”, “blocked out memories”, and related non-normal memories are reliable, accurate representations of real events suitable for courts of law.

I have been invited to speak on issues relevant to this case to several State Bar Association conferences as well as the American Bar Association's National Litigation Section meetings. I served as a Special Assistant Attorney General for the State of Utah assisting in licensing prosecutions of negligent

mental health professionals. I have also consulted with multiple states licensing boards regarding licensing prosecutions of negligent psychotherapists including social workers, psychologists, and psychiatrists. One of my main areas of concentration as an attorney and as a science expert witness has been to ***protect the integrity of the mental health and legal systems as well as protect vulnerable patients and citizens from unreliable, unproven “treatment” methods*** — including but not limited to helping courts and professionals understand the methodology of investigations, the science of memory-false memory, the science of memory contamination via improper interviewing, the nature of scientific evidence regarding alleged “repressed and recovered memories” “buried memories” “blocked memories” “dissociated memories”, improper-abusive investigative interviewing methods and psychotherapy of children and adults, use and misuse of psychological testing, limitations on “clinical judgment”, research documenting the general lack of expertise in the psychotherapy professions, the well-documented inability of psychotherapists to reliably distinguish true from false patient reports without corroborating evidence, the importance of generating and testing alternative investigative methodologies (avoiding confirmation bias), the standards of care in the psychotherapy professions (social work, psychology, psychiatry, counseling, etc.) and similar issues.

My scientific research began with studies on the relationships between emotion and cognition. Later I worked doing research with some of the world's leading surgeons studying the ways in which children and families cope with the stresses of chronic, complex medical conditions. I was fortunate to receive several national research awards and was able to present my work at psychological and medical conventions in North America, South America, Australia, Europe, and Asia. I developed an interest in reforming and improving the health care system for children and was admitted to Harvard Law School to study such legislative and policy issues. One of my professors-advisors at Harvard, Stephen G. Breyer (then Chief of the US 1<sup>st</sup> Circuit Court of Appeals, later Assoc. Justice of the US Supreme Court), encouraged me to use my unusual mixture of science-law knowledge to help the legal system *reduce the influence of unreliable, “junk science” theories, methods, and ideologies and thus protect the integrity of the legal system.* (Justice Breyer later wrote the Kumho decision of the US SCT applying Daubert analyses to a wide range of experts and related evidence but continuing to include the foundational Frye analysis of “acceptance by the relevant scientific community”). I have been following Justice Breyer's recommendation – to apply a multi-disciplinary process applying science-legal knowledge to ***protect the integrity of the legal system*** -- for over 30 years.

Following the success of our initial project – the Emergency Medical System for Children Act -- reform legislation enacted in many states that saved the lives of thousands of children annually (See

citations below). The next major reform project took years as ***I worked with science-therapy-legal colleagues to reduce the historic, disaster of the inherently unreliable, unproven and controversial "Recovered Repressed Memory-Multiple Personality Disorder-Dissociation" (RRM-MPD-DISSL therapy movement.*** Employing a multidisciplinary approach -- litigation (hundreds of therapy malpractice suits and/or Frye and also Daubert hearings), regulation (therapy licensing revocations, enforcement of informed consent rules), education (scientific research on research, international media), and legislation (the Truth and Responsibility in Mental Health Practices Act) -- my colleagues and I greatly reduced (nearly eliminated) the damage from this worst stain on the mental health system in history. Multiple Frye and Daubert hearings excluding such unproven, controversial, inherently unreliable notions nearly ended prosecutions in the US based on RRM-MPD-DISSL evidence. (See citations below).

My next project sought to reduce damage to vulnerable patients from the reckless “Re-Birthing Therapy” movement. I testified as an expert witness in the criminal trial against the therapists whose “rebirthing therapy” resulted in the death of child patient CN. The therapists were convicted and received substantial prison sentences. I worked with the Colorado Legislature to pass a law banning “rebirthing therapy”. I also flew to NY to be interviewed on the ABC 20/20 TV journalism show to warn millions of Americans of the dangers of “rebirthing therapy”. To the best of my knowledge, this multidisciplinary reform effort ended the reckless practice of “rebirthing therapy” in the U.S.

Other reform projects have included lawsuits and licensing renovation hearings to reduce damage from the reckless “Coercive Holding Therapy” movement, as well as forcing the resignation of a Chairman of Psychiatry at a major medical school for violating the informed consent rights of vulnerable patients.

I have consulted with and testified for prosecutors in several states to convict criminals and protect the public from abusers (See, e.g., my Frye-Daubert-Kumho hearing testimony in the successful prosecution of the “Twilight Rapist” in TX) as well as help many professionals across the nation become more science-informed when dealing with complex memory cases and investigative methodological issues.

When Oxford University Press planned to publish an international book on Abuse Cases with a chapter on specialized memory issues such as RRM-MPD-DISSL theories and practices, Frye-Daubert hearings, and related issues they asked me to write the relevant chapter. The Right Honorable, Lord John

Thomas, Lord Chief Justice of England and Wales attended our Oxford University Press book launch at Gray's Inn in London and told me he was aware of my reform work and grateful.

In multiple Frye-Daubert-Kumho hearings (see citations below), when I have participated as a consultant, testifying expert, or the trial attorney questioning scientists on both sides of the issues, we have prevailed in such hearings as the courts rejected expert witness and alleged victim testimony based on RRM-MPD-DISS “memories”, “blocked-off memories”, “buried memories”, “dissociated memories”, “changing memories” and related inherently unreliable “recovered repressed memories” and related non-normal memory processes that were excluded by courts to ***protect the integrity of the legal system***.

I hope that this report in PA v Sandusky will be helpful to the court and assist in the process of ***protecting the integrity of the legal system*** of Pennsylvania. The goals of this report include generating and testing alternative investigative hypotheses, formulating expert opinions, and helping the legal system learn how to incorporate reliable, valid science while excluding unreliable “junk science” notions and testimony.

**3. METHODOLOGY:** My opinions in this case are the product of scientifically informed, rigorous, valid, and reliable methodological standards, procedures, and practices. My opinions in this case are consistent with those of my colleagues in the Relevant Scientific Community. In my opinion (a science opinion), I am a member of the relevant scientific community (RSC) (see comparison chart below). On the case record reviewed, To the best of my knowledge, I am apparently the only expert witness *member of the relevant scientific community* to review a wide range of records in this case. To the best of my knowledge, I am also apparently the only expert in the science-history of reliable-proper vs. unreliable-improper police interviewing methodologies to review a wide range of records in this case. To the best of my knowledge, I am also apparently the only expert in this case on the science-history of the legal, legislative, licensing, and scientific methods – including Frye and Daubert hearings -- used to dramatically reduce societal harms from RRM-MPD-DISS ideologies-practices to review a wide range of records in this case. To ensure the reliability, validity, consistency, and accuracy of my opinions in this case I have followed a series of reliable methodologies. These methodologies include the following components.

**3A. Acquire and demonstrate expert knowledge of the relevant science and standards of care.** I have published peer reviewed articles on the importance of the proper use of scientific methodologies and Frye-Daubert-Kumho analyses and standards to protect the integrity of the legal and mental health systems. These articles have been published in some of most authoritative and respected journals and

texts in the world including *Psychology, Public Policy, and Law* and with the Oxford University Press. I have also given invited training addresses on such issues to continuing education groups in law-psychology-social work-psychiatry, to the national convention of the American Bar Association Litigation Section, as well as to state and federal judges including an invited training presentation for Federal Judges at the request of the US 9th Circuit Court of Appeals Program Office. (See, 2022 CV Resume of RC Barden, Ph.D., JD).

**3B. Cite to and quote from high quality peer reviewed published research articles and texts from some of the most reliable sources in the world with many published by world experts in the relevant fields.** As a member of the relevant scientific community in psychological research (that is, someone who has obtained federal, state, and private grant funding to conduct science research and someone who has published in and performed editorial duties for leading peer-reviewed science journals and texts in psychology and medicine – also in law and public policy -- I am familiar with assessing the quality of scientific research and other journal articles and the specifics of how to review and assess the methodological soundness, reliability and validity of scientific research. In my reports in this case, I cite in detail —with quotes and citations — to the highest quality research often conducted by the most esteemed and methodologically sophisticated world experts in the field. I have known and worked with many of the world experts in the relevant fields for many years.

**3C. Form Opinions and Testify Applying Sufficient Knowledge, Training, and Experience to offer expert opinions and explain foundational science as a member of the Relevant Scientific Community.** As a member of the relevant scientific community -- the group of science experts like myself who —

-- *create-write science articles, publish, and professionally write-edit-critique science journals* and

-- have received *funding as a principal investigator from Federal and also State and also Private research grants*, and

-- have *engaged in editorial duties for the major peer reviewed scientific journals*, and

-- have given *invited addresses at the national conventions of relevant professions/sciences (American Psychological Association, American Bar Association, American Psychiatric Association)* and

-- have *received national science awards*, and

-- have given *invited addresses at national science universities* and the US Surgeon General's Conference, and other indications of membership in the relevant scientific community.

I hope the following summary chart will be helpful to identify some of the differences between the knowledge, training, and experience of members of the Relevant Scientific Community as compared to local “counselors”, “therapists” and/or legal professionals.

**EXPERT QUALIFICATIONS CHART:** As a member of the national *Relevant Scientific Community*, I answer **YES** to all of the questions below while “counselors”, “psychotherapists”, attorneys, judges, and “investigators” involved in such cases often would answer **NO** to virtually all of these questions.

- Have you received national science awards?
- Have you received a Ph.D. from a leading university program? (U of MN, UC Berkeley, Stanford Univ Medical Ctr/Palo Alto USVA Medical Ctr.)
- Have you received a JD from a leading tier law school? (Harvard Law School)
- Have you obtained a Psychology Faculty Position at a leading University?
- Have you obtained a Medical Faculty Position at a leading University?
- Have you obtained a Law School Faculty Position at a leading University?
- Have you published in leading child psychology journals/texts?
- Published in leading pediatric journals/text?
- Published in leading social psychology journals/text?
- Published in leading clinical psychology journals/text?
- Published in leading psychiatric journals/text?
- Published in leading surgical journals/text?
- Published in leading legal/ethics journals/text?
- Have you received Federal grant funds as P.I. to conduct research? (PI = Scientist in Charge)
- Received State grant funds as P.I. to conduct research?
- Received Private grant funds as P.I. to conduct research?
- Have you given invited addresses at the:
  - National convention of psychologists (APA)
  - National convention of psychiatrists (APA)
  - National convention of lawyers re: use of expert witnesses (ABA)
  - National convention of the American Society for Clinical Hypnosis
  - National United States Surgeon General’s Conference?
  - International Medical Conferences... UK, France, US, Canada, India, Chile?
  - International Sports Psychology Conference at the Beijing Olympics (Aug-2008)
- Have you given an invited address at Harvard University?

- Have you given an invited address at Harvard Law School?
  - Have you given an invited address at Yale University?
  - Have you given an invited address at Columbia University?
  - Have you given an invited address at University of Southern Ca.?
  - Have you given an invited address at the Universities of TX, GA, IA, CA, MN, NC
  - Have you given an invited address at the United States Military Academy at West Point, NY?
  - Have you consulted with the US Department of Justice?
  - Have you consulted with the US FBI?
  - Testified as a Prosecution Expert Witness in Multiple States?
  - Testified as a Defense Expert Witness in Multiple States?
  - Given invited training addresses to Federal Judges?
  - Given invited training addresses to State Judges?
  - Given invited training addresses to the F.B.I.?
  - Given invited training addresses to Sex Crimes Investigators Associations?
  - Given invited CE addresses to over 10,000 psychologists, social workers, MDs?
  - Have you written an invited chapter on Memory Issues in Law for Oxford University Press?
  - Have you performed invited Editorial duties for leading Psychiatric Journals
  - Performed invited Editorial duties for leading Law/Public Policy Journal?
  - Performed invited Editorial duties for leading Child Psychology Journal?
  - Editorial duties for leading Social Psychology Journal?
  - Editorial duties for leading Law/Public Policy Journal?
  - State Government Appointment to Licensing Board?
  - Have you served as a Special Assistant State Attorney General prosecuting psychotherapists?
  - Have you served as a Harvard Law School Intern for the Massachusetts Attorney General's Office for Victims of Violent Crimes?
  - Expert Consultant to State Licensing Boards re: revocation hearings in many jurisdictions?
  - Frye-Daubert Hearings: As a lawyer or expert have you succeeded in excluding unreliable, junk social science, psychotherapy, and/or medical evidence in multiple legal cases?
- As a Psychotherapist/Counselor:
- have you treated patients in hospital inpatient settings?
  - have you treated patients in outpatient settings?
  - have you treated patients in prison-forensic settings?
  - have you treated patients in independent practice?
  - have you treated trauma victims in VA Hospitals, Clinics, Prisons, and Church settings?

- have you treated, counseled, and/or researched with victims of the Pol Pot concentration camps?
- have you treated, counseled, and/or researched with victims of the Holocaust?
- have you treated adult patients?
- have you treated psychotic patients?
- have you treated neurologically impaired patients?
- have you done diagnostic assessments of patients?
- have you treated families?
- you treated Children and Adolescents as patients?
- have you treated Medically ill patients?
- have you treated Drug Addicted patients?
- have you treated Incarcerated patients with criminal convictions?
- have you counseled troubled people included anxious, depressed, and traumatized victims in church settings?
  - As a performance psychology consultant have you trained Olympic Athletes, NBA players, Navy Fighter Pilots, Harvard Law Students, Harvard College Students, and Intl Ranked Tennis players?
  - As a University Faculty member have you trained MA graduate level psychotherapists?
  - As a University Faculty member have you trained PhD graduate level psychotherapists?
  - As a University Faculty member have you trained MD students and faculty in relevant areas?
  - As a University Faculty member have you trained Law School students and faculty?

***3D. Formulate Opinions and Testify Applying Sufficient Knowledge, Training, and Experience to be a member of the Relevant Clinical Mental Health Professional Community.***

***3E. Offer detailed, relevant, reliable, peer-reviewed, published scientific information as well as detailed opinions including alternative investigative hypotheses and research summaries to provide the legal system (court, lawyers, parties) with essential knowledge to understand the issues in a case.*** I have written this report to provide a summary for the court of my opinions and ongoing investigative hypotheses in this case, based upon my review of the case records as listed and discussed in this report.

***3F. Train legal and mental health professionals in the basic and essential science that should guide and inform attorneys, judges, and juries in science-complex cases such as PA v Sandusky.*** For example, in my opinion, the science discussed below is essential to properly inform the legal system (judges, lawyers, and juries) in such cases to ***protect the integrity of the legal system.*** The research

discussed below includes essential, foundational, peer reviewed, published research to explicate and support the science information underlying my detailed opinions and hypotheses in this report.

3G. **RELIABLE SCIENCE IS ESSENTIAL FOR A RELIABLE LEGAL SYSTEM:** In an international publication for Oxford University Press on Sex Abuse cases, I was invited to contribute the chapter on Controversial Memory Issues (RRM-MPD-DISS, Frye-Daubert hearings, etc.) and began by writing:

*“Reliance on science is essential to proper legal process. The science of memory is particularly important.* Criminal investigations must often focus on individual memory reports in the absence of corroborative evidence. Controversial theories involving the notion of ‘repressed-recovered memories’ (RRM) include multiple personality disorder (MPD), dissociative identity disorder (DID), traumatic amnesia, dissociative amnesia, betrayal trauma theory, and related concepts. Such theories have generated some of the most contentious, complex, and forensically challenging issues in the recent history of the mental health and legal systems.”

I also noted that coordinated, multidisciplinary efforts in legislation, litigation, licensing regulation, education (public and professional), and science (memory research) abruptly halted most all of the widespread abuses of the RRM-MPD-DISS therapy movement while generating important legal and mental health reforms. The informed application of recent legal publications is often essential in complex legal cases such as PA v Sandusky. These reforms include **Frye-Daubert/Kumho hearings** applying the doctrines of multiple historic U.S. Supreme Court cases spanning decades from Frye to Daubert-Kumho. It is my understanding that in both Frye and Daubert-Kumho hearings the judge – acting as a gatekeeper to protect the integrity of the legal system -- must assess whether or not an idea-theory-methods-practices have acquired “**acceptance in the relevant scientific community**”. With regard to the controversial ideas/methods-practices known as RRM-MPD-DISS ideologies, our Frye-Daubert-Kumho hearings were to review the relevant research so the court could assess whether such methods had been accepted by the relevant scientific community and thus act as a gatekeeper to **protect the integrity of the legal system** from unreliable, tainting misinformation and also from inherently unreliable, tainted “memory” reports. The innovative, multidisciplinary, science-litigation team methods and practices that ended the RRM-MPD-DISS treatment industry (i.e., the “memory wars” malpractice lawsuits and licensing revocations) also provide a highly effective model for litigating controversial memory cases in civil, criminal, administrative, and family law systems.

It is worth re-emphasizing that for the purpose of properly reviewing and/or ruling on issues regarding the exclusion of the inherently unreliable RRM-MPD-DISS ideology, methods, and results -- ***the Frye standard and the Daubert-Kumho standards have produced identical results.*** It is my understanding that both standards require a foundational analysis of whether these novel, unproven, controversial RRM-MPD-DISS notions are "***generally accepted by the relevant scientific community.***"<sup>1</sup> As the Amicus cited below and multiple other publications demonstrate, *RRM-MPD-DISS ideology, methods, and results have been actively and repeatedly rejected by the relevant scientific community in both Frye and Daubert hearings. (See, case citations below.)* See eg. in a Minnesota Frye hearing (MN uses a "Frye-Mack" standard) I participated in a complex week-long hearing with ***five*** national experts on these issues. Minnesota is one of the remaining "Frye" states yet came to the very same conclusion as my NH, RI, NE, CA, TX, and UT cases on such issues. For example, in the Frye hearing for John Doe v. Archdiocese of St. Paul (Case No. 62-C9-06-003962, December 8, 2009, 2nd Judicial District, Judge Gregg E. Johnson) after a detailed, complex, 5-days of science testimony the court ruled, "*Plaintiff failed to meet his burden of proof under the Frye-Mack standard of showing that the concept of repressed and recovered memory is generally accepted in the relevant scientific community*" ...Defendant's Motion to Exclude Expert Testimony under the Frye- Mack standard is hereby GRANTED." This decision was affirmed by the Minnesota Supreme Court on July 25, 2012, John Doe v. Archdiocese of St. Paul, 817 N.W.2d 150 (Minn. 2012). Note that the "non-normal-memory" reports of the alleged victim were excluded as they were based on the same unreliable notions of RRM-MPD-DISS "recovered repressed memories" theory – notions not accepted by the relevant scientific community --- and were thus also excluded and ***the case was dismissed.*** As I recall happening in other Frye-Daubert hearings in NH, NE, MN, and UT.

### **3H. SUMMARY OUTLINE OF THIS REPORT:**

- Expert Qualifications and Methodology of this Report including a discussion on the "relevant scientific community" and review processes in Frye and Daubert hearings.
- SCIENCE-HISTORY: Essential Science-History Knowledge and Standards Designed to Ethically and Competently Investigate and Litigate Complex Abuse Cases
- NEWLY DISCOVERED EVIDENCE: Review and Analysis of the Newly Discovered Shubin-SS and AJ Dillon investigation evidence

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<sup>1</sup> I am not offering legal opinions in this case but rather ***forensic psychological expert opinions.*** Forensic experts are expected to understand and apply the proper legal standards in their work. Although I am an experienced attorney as well, I fully understand that ***the court is the only legal expert in this case.***

- DETAILED OPINIONS regarding science-memory issues in the PA vs. Sandusky Investigation and Trial.
- INVESTIGATIVE HYPOTHESES, QUESTIONS, and DISCUSSION OF EVIDENCE ON THE RECORD.

**4. ESSENTIAL SCIENCE-HISTORY KNOWLEDGE REQUIRED TO PROPERLY INVESTIGATE AND LITIGATE ABUSE CASES:**

It is essential that child abuse cases be properly, reliably, and professionally investigated and prosecuted to protect the public. To protect the integrity of the legal process, it is also essential that professionals involved in abuse cases know, understand, and properly apply the lessons learned from the relevant history and science.

In 1996, I wrote the following statement — signed by a stellar group of colleagues ( including several of the most widely cited social and clinical scientists in the world and a past President of the American Psychological Association ) — to the U.S. Congress:

“Child abuse is a serious social problem that should be dealt with in an effective and responsible manner. We strongly support the implementation of effective programs to reduce the incidence of child abuse, assist victims of abuse, and punish those who harm children. Efforts to attain these important goals must, however, be based in fact rather than prejudice, science rather than hysteria, and reason rather than political ideology.”

Protecting children and abuse victims is a very important job in our society. I have profound respect for law enforcement professionals, investigators, prosecutors, allied staff, and all who work in the law enforcement, family law, and mental health fields who strive to protect our youth from harm. I am deeply grateful for the very important work that they do. I have consulted with, trained, and/or testified for, prosecutors in multiple states as well as conducted invited training for F.B.I. personnel and Sex Crimes Investigators Associations. I have also served in public roles as a Member of the Minnesota Board of Psychology, as a Special Assistant Attorney General in Utah, as a Harvard Law School Legal Intern for the Massachusetts Attorney General’s Office, as a Clinical Psychology (therapy and assessment) Intern for the Palo Alto Veterans Administration /Stanford Medical Centers and in other positions. I have also taught Continuing Legal and Psychology Education seminars to thousands of psychologists, psychiatrists, social workers, and/or investigators in many cities in many states. I hope my

opinions in this case will assist and inform the legal process and the hard-working professionals involved in protecting the public.

#### **4A. THE ESSENTIAL HISTORY OF INVESTIGATING and PROSECUTING ABUSE CASES**

In complex cases like the one under review, it is essential that the professionals involved (investigators, lawyers, judges, therapists, etc) know, comprehend, and properly apply basic history-science knowledge. Below is very short summary of essential information. See, e.g., Continuing Education presentation by Barden, R.C., "The Science and Law of Proper and Improper Criminal, Civil, and Family Law Investigations and Expert Opinions in Abuse Cases", presented to the Pacific Judicial Council and American College of Trial Lawyers, Island of Guam, Jan 17-19, 2018. Invitation and funding from the U.S. Federal 9th Circuit Court of Appeals Programs Office.

**For thousands of years, civilization produced little or no legal protections from abuse – finally we engaged in investigations-prosecutions, but the initial efforts were not well informed by science.** Tragically, for centuries the legal system provided little or no protection or justice for the vulnerable and abused. From the 1960s to the 1990s criminal prosecutions for abuse grew rapidly. Troubles arose when law enforcement and therapists used interview methods that were not properly informed by the science of memory. Until near the end of the 20th century, the scientific community showed little interest in the centuries old debate over the accuracy of witness testimony.

***Infamous Day Care Hysteria and related cases of abusive mis-interviewing led to science-informed protocols for proper interviewing methods:*** A wave of infamous criminal cases involving improper, abusive, memory-manipulative, repetitive, interview practices resulted in implanted-coerced false "memories" of abuse in multiple witnesses including the McMartin, Kelly Michaels, Wenatchee, Little Rascals, many therapist-tainted adult cases, and others. These tragic, infamous cases demonstrated ***how improper interviewing methods could taint or destroy the integrity of the legal process.***

These cases generated considerable controversy and interest in the development of ***science-informed investigative interviewing methods.*** See, e.g., Bruck, M. and Ceci, S. (1995). Amicus brief for the case of State of New Jersey v. Kelly Michaels presented by the committee of concerned social scientists. Psychology, Public Policy, and Law, 1, 272-322; and exposés earning a 2001 Pulitzer Prize Award for Rabinowitz, D., See, *No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times*.

Decades of diligent research in memory, cognition, and false memories produced much more ***reliable, valid, science-tested methods and principles for the proper interviewing of witnesses of all ages in criminal cases.*** See, e.g., Michael E. Lamb, Yael Orbach, Irit Herskowitz, Phillip W. Esplin and Dvora Horowitz, “A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: *A review of research using the NICHD Investigative Interview Protocol,*” Child Abuse & Neglect, Volume 31, Issues 11-12, November, December 2007, Pages 1201-1231 ; and. Michael E. Lamb, Irit Herskowitz, Yael Orbach, & Phillip W. Esplin, *Tell Me What Happened: Structured Investigative Interviews of Child Victims & Witnesses*, Wiley Series in Psychology of Crime, Policing and Law, Sept. 2008 (and ALL citations and studies contained therein).

***Satanic Cult Hysteria, Multiple Personality Disorder Hysteria, “Recovered Repressed Memories” Hysteria, “Traumatic Amnesia” claims and “Memory Wars I”*** –In the hysterias of the 1980s and 1990s, thousands of therapist-book-movie-induced false memories – many debunked by FBI and other investigations -- of horrific abuse in adults and children resulted from poorly trained therapists adopting the inherently unreliable RRM-MPD-DISS ideologies and methods. We learned from that era, that witnesses of all ages are often vulnerable to outside influences including especially Repetitive, Leading, Suggestive, and Coercive interviews. Vulnerable witnesses often ***incorporate suggested facts or narratives or repeated instructions from an interviewer's questions or other sources into their memories – resulting in actual changes in the the memory of the witness. Repeated questioning is a particularly powerful methods of producing changes in the memories of vulnerable – changes the witness may not be aware of.*** Such witnesses are not lying but are instead reporting “believed-in-but-false memories” induced via improper interviewing. See, Coyle, Joseph in D. Schacter (Editor), *Memory Distortion: How Minds, Brains, and Societies Reconstruct the Past*, page 24; See also, D. Schacter. *The Seven Sins of Memory*, Houghton Mifflin, 2001. p.4.

Poorly trained, science-uninformed, unethical psychotherapists by the thousands created a tsunami of false memories of abuse, cult abuse, “human sacrifice abuse” and other hysterical “memories” in the 1980 and 1990s. The FBI spent millions of dollars investigating and debunking thousands of such cases (See details below). My colleagues and I put together teams of litigators and scientists and launched multi-disciplinary reforms that included hundreds of successful lawsuits and many successful licensing revocation actions with State Licensing Boards. I was personally involved in many of these cases. See, Barden RC: Reforming the Mental Health System: Coordinated, Multidisciplinary Actions Ended “Recovered Memory” Treatments and Brought Informed Consent to Psychotherapy. *Psychiatric Times*.

2014;31(6): June 6, 2014; See also, Belluck, P. Memory Therapy Leads to a Lawsuit and Big Settlement [\$10.6 Million], The New York Times, Page 1, Column 1, Nov. 6, 1997 and many, many more. The battle between radical RRM-MPD-DISS therapists vs. the scientists/lawyers/licensing boards was known as the “Memory Wars”. These cases and stories featured prominently in the international media for years. I was personally interviewed on such subjects by U.S. Congressional Quarterly, CBS 60 Minutes, ABC NIGHTLINE, the CBS Evening News, TIME Magazine, Newsweek Magazine, U.S. News & World Report Magazine, Insight Magazine, The New Yorker Magazine, the L.A. Times, the New York Times, the Chicago Tribune, the Minneapolis Star and Tribune, the St. Paul Pioneer Press, the London BBC, U.S. National Public Radio, ABC News 20/20, National German Television, National Finnish Television, 60 Minutes Australia, Canadian Public Radio, PBS Frontline, NBC Dateline and many other media sources.

During this era, thousands of abuse claims based on “recovered repressed memories” and “dissociated memories” were ***investigated and debunked*** by the FBI (led by Special Agent K. Lanning) and the National Center for Child Abuse and Neglect (led by Prof. G. Goodman) ***finding essentially zero corroborating evidence for over 12,000 cases of recovered memory allegations*** of horrific abuse based on “memories starting to come back”, “buried memories”, “blocked memories” and other typical RRM-MPD-DISS ideologies and methods. Finally, after lengthy and expensive (tens of millions of dollars) investigations in many states, FBI Special Agent Kenneth Lanning held a press conference and said, “***it is time for the psychotherapists to explain why patients are claiming things that do not appear to be true***”. (See, summaries of this history published by Ofshe/Watters, Pendergrast, Loftus, McNally, Barden and others as cited in this report plus hundreds of science and media articles available on the internet.)

***Frye-Daubert-Kumho Hearings: The Legal System Adopted Frye and much later Daubert-Kumho Doctrines and Methods for Excluding Unreliable Junk Science – such as the RRM-MPD-DISS ideology tainted evidence so prominent in this case.*** Troubled by the weight of junk science corrupting the integrity of the legal system, the US Supreme Court has issued rulings over many decades from Frye to Daubert-Kumho and progeny instructing judges to act as gatekeepers to hold hearings, carefully examine evidence, then exclude from the legal system unreliable and invalid pseudoscience that has been **rejected by the relevant scientific community** (scientists not therapists!) to **protect the integrity of the legal system**.

The foundational issue **for both Frye and Daubert-Kumho analysis** is whether the proposed evidence (whether expert or witness testimony) has been “**accepted by the relevant scientific community**” (scientists not therapists). It is important to note that virtually all ***psychotherapists are not scientists*** and they do not obtain research grants, and they do not serve in the **science** journal editorial process, they

rarely if ever publish in credible science journals, and are thus not members of the relevant scientific community. As discussed above, multiple Frye-Daubert-Kumho hearings have been conducted, several involving multiple international experts in the relevant science with some hearings extending for weeks and covering hundreds of peer-reviewed publications. *Multiple Frye-Daubert science review hearings I participated in – whether applying the Frye or Daubert standards or both – resulted in the judicial exclusion of RRM-MPD-DISS ideology-methods as well as the tainted “memories” that were “recovered” “buried” “blocked” “changed following multiple interviews-therapy) etc.* (See details and full citations below).

## **FOUNDATIONAL SCIENCE ESSENTIAL TO SUCH CASES**

### **4B. THE ESSENTIAL SCIENCE OF INVESTIGATING and PROSECUTING ABUSE CASES**

**4B1. Basic Essential Science-History:** Abuse cases rarely involve claims of clearly NON-NORMAL RRM-MPD-DISS “memories”. Multiple, non-normal “memory” claims are well documented in PA v Sandusky (See section below for citations to RRM-MPD-DISS allegations and testimony in this case). Under the Frye-Daubert-Kumho minimal standards for evaluating science-related evidence from Experts AND Witnesses, the opinion of the Relevant Scientific Community (RSC) is essential. With regard to the RRM-MPD-DISS controversial “memory” claims that were so essential in the investigation and trial of this case --and so totally ignored by the science-uninformed and/or corrupt PA investigators, lawyers, ad judges)—*dozens of the world’s leading experts in the relevant sciences have spoken publicly and clearly on the key issue of the reliability of RRM-MPD-DISS ideology and “dissociated” “blocked” “buried” or “repressed” memories of trauma that are “recovered” “clarified” “put together” “start coming back” or similar descriptions following multiple interviews/therapy/or exposure to RRM-MPD-Dissociation ideology (E.g. lawyer Shubin, therapist Macnab, Investigator Leiter, etc).*

Regarding the reliability of transformed, changed, formerly “buried”, formerly “blocked”, alleged “memories” the world’s science experts have clarified *the relevant scientific community reviewed and rejected RRM-MPD-DISS ideology-methods-practices:*

*“Decades of research and scientific debate have clarified over and over again that the notion of traumatic events being somehow “repressed” and later accurately recovered is one of the most pernicious bits of folklore ever to infect psychology and psychiatry. This folklore provided the*

***theoretical basis for “recovered memory therapy” -- arguably the worst catastrophe to befall the mental health field since the lobotomy era.”***

See, Barden, R. C. (2006) Amicus Curiae Brief of the National Committee of Scientists for Academic Liberty, for Defendants and Appellants, Elizabeth Loftus, et. al., Submitted to the Supreme Court of the State of California, Feb., 2006. With AMICI Aaron T. Beck, Harrison G. Pope Jr., Richard McNally, James I. Hudson, Richard Ofshe, William M. Grove, Paul R. McHugh, Robert Perloff, Stephen J. Ceci, Henry L. Roediger, August Piper, B. Christopher Frueh, Steve Lynn, Peter von Koppes, John F. Kihlstrom, Gerald M. Rosen, Sally Satel, Maryanne Garry, Hans F.M. Cromberg, David F. Bjorkland, Phillip W. Esplin, James M. Wood, Richard Gist, Irving Kirsch, Steven Hayes, James D. Herbert, Robert Montgomery, Harald Merckelbach, James Ost, Scott O. Lillienfeld, Marc Sagerman, Grant J. Devilly, Anthony Pratkanis, Jon D. Elhai, Timothy Tumlin, D. Stephen Lindsay, Paul A. Ornstein, Susan A. Clancy, John W. Bush, Paul R. Lees-Haley, Howard D. Eisman, Mark Creamer, W. Jake Jacobs, Timothy Moore, Daniel David, Margaret Bruck, Amina Memon, Jeffrey M. Lohr, Giuliana Mazzoni, Jean-Roch Laurence, Elizabeth Meadows, Ron Acierno, Steven E. Clark, Saul Kassin, Richard Shiffrin, Michael Toglia, Robert V. Kail, J. Don Read, Loren Pankratz, Michael A. Persinger, Debra Poole, Charles A. Weaver III, Joseph de Rivera, David S. Holmes, Terence W. Campbell, Emily Carota Orne, John Cannell, Howard Fishman, Richard A. Leo, Deborah C. Beidel, James Coyne, Fred Frankel, Nora S. Newcombe, Gordon J. G. Asmundson, Howard N. Garb, William G. Reiner, Mahzarin Rustum Banaji, Robyn M. Dawes, Robert A. Karllin, Harold I. Lief, Daniel L. Schacter, Steven Pinker, Naomi Breslau, and more.

See also, McNally, R.J. (2003) *Remembering Trauma*, Cambridge, MA: Belknap Press/Harvard University Press.

See also, Pope H., Oliva P., and Hudson J., ‘Repressed memories: The scientific status of research on repressed memories’ in Faigman, D.L., Kaye, D.H., Saks, M.J., and Sanders, J. (eds) (2012) *Science in the law: social and behavioral science issues*, St. Paul, MN: West Group, 807–913.

See also, Piper A., Lillevik L., and Kritzner R., ‘What’s wrong with believing in repression? A review for legal professionals’ (2008) 14 *Psychology Public Policy and Law*, 223–42.

See, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, Springer International Publishing, ISBN 9783319633749.

I have written an invited chapter for the Oxford University Press book on this subject. This publication is a peer reviewed summary of several essential issues relevant to the PA v Sandusky case including RRM-MPD-DISS ideology/methods, confirmation bias, the history of Frye and also Daubert hearing exclusions of this novel pseudo-science and related information essential to what **could and**

**should have been** a competent, ethical, science-informed investigation and trial in PA v Sandusky. See, Barden, R.C., Memory and Reliability: Developments and Controversial Issues. In *Witness Testimony in Sex Cases*, Eds. Pamela Radcliffe, Anthony-Heaton Armstrong, Gisli Gudjonsson, and David Wolchover, Consultant Editor: Sir Anthony Hooper, Oxford University Press, March 2016.<sup>2</sup>

For a 2022 update on this research area, we should discuss the latest peer reviewed published science evidence from several world experts showing the striking and well-documented *lack of interest by the relevant scientific community in the novel, unproven, controversial, inherently unreliable notions of RRM-MPD-DISSOCIATION claims and ideology that were so prominent in this case – but somehow ignored.* See, e.g., H. G. Pope, J. Schnabel, J. I. Hudson, (2022), Current scientific interest in dissociative amnesia: A bibliometric analysis, *Appl Cognit Psychol.* 2022;1–10. DOI: 10.1002/acp.4021 In a bibliometric analysis, we used the PubMed search engine to count the number of publications identified by the search term “dissociative amnesia” for the years 2011– 2020. We then counted publications from the same decade for five representative comparison disorders: “panic disorder,” “anorexia nervosa,” “obsessive compulsive disorder,” “attention deficit hyperactivity disorder,” and “bipolar disorder.” ***Our search yielded only 89 publications for “dissociative amnesia,” and only seven of these involved localized or selective amnesia for specific events. By contrast, we found between 3000 and 21,000 publications for each of the five comparison (actual) disorders during 2011–2020.*** We performed several additional secondary analyses, all of which suggested that the diagnosis of “localized or selective dissociative amnesia” has generated little (virtually zero) actual scientific interest in recent years. The

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<sup>2</sup> This case: On this record, it appears that the judges, prosecutors, and defense lawyers in PA v Sandusky were uninformed and misinformed with regard to the relevant science and history. *ALL failed to know, understand, comprehend, and properly apply the internationally reported essential science and history that was so relevant and essential to a proper investigation and trial in this case.* On this record, this essential information was never presented to the uninformed, misinformed jury. The attorneys failed to properly seek and conduct a FRYE hearing regarding admission of the novel, unproven, controversial, inherently unreliable evidence in this trial regarding “blocked”, “buried”, “changing memories”. Highly improper, coercive, and abusive interviewing methods and other unreliable procedures failed minimal standards of care. The legal professionals involved did not know nor realize that much of the RRM-MPD-DISS ideology and evidence investigated and presented in the case has been carefully reviewed and then *rejected by the relevant scientific community and also excluded by courts in multiple states following proper Frye and Daubert hearings (citations below).*

RRM-MPD-DIIS "myths" are, however, still popular among some groups of poorly trained psychotherapists such as the ones reportedly involved in this case.

**4B2. Basic Essential Science-History: CONFIRMATION BIAS is often the most serious of all investigation errors in law enforcement, science, law, medical diagnosis, and other professions.** There are many examples of Confirmation Bias in this case.

Confirmation bias is one of the most serious, damaging, and/or fatal error in *criminal investigations and trials — as in this case*. To avoid Confirmation Bias -- the practitioner must follow the most basic procedures in science, that is first *generate then test alternative investigative hypotheses*. This hypotheses-test-refine hypotheses process is the essential core of science and all proper criminal investigations, health care diagnosis, and policy analysis. (See, the US SCT decision in the Daubert case, Sir Karl Popper's philosophy of science, Sir Francis Bacon essays, etc. ) and all proper, reasonable, effective investigations of crimes, illnesses, etc.

*Confirmation Bias is “The tendency to test one's beliefs or conjectures by seeking evidence that might confirm or verify them and to ignore evidence that might disconfirm or refute them.”* — The Oxford Dictionary definition of confirmation bias

"He who does not expect the unexpected will not detect it" — Karl Popper (the US SCT Daubert and Kumho rely on the philosophy of science of Sir Karl Popper.) See also, C. Hempel, Philosophy of Natural Science 49 (1966) ("[T]he statements constituting a scientific explanation must be capable of empirical test"); K. Popper, Conjectures and Refutations: The Growth of Scientific Knowledge 37 (5th ed. 1989) ("The criterion of the scientific status of a theory is its falsifiability, or refutability, or testability").

***If one were to attempt to identify a single problematic aspect of human reasoning that deserves attention above all others, the confirmation bias would have to be among the candidates for consideration.*** See, Nickerson, R. Confirmation Bias: A Ubiquitous Phenomenon In Many Guises, Review of General Psychology, 1998, Vol 2, No 2, 175-220.

***“Confirmation bias is perhaps the best known and most widely accepted notion of inferential error to come out of the literature on human reasoning.”*** (Evans, 1989, p. 41)

"Because of confirmation bias and desirability bias, we will tend to collect and interpret evidence selectively to favor a judgment that, respectively, we already believe or wish to be true.... Dror coined a term for the impact of biasing information: the forensic confirmation bias. As soon as you know what others think, confirmation bias can lead you to form an overall impression (diagnosis) too early and to ignore contradictory information." — Nobel Prize winner Daniel Kahneman, Ph.D. in *Noise, A Flaw in Human Judgment*, Little, Brown Publishers (May 18, 2021); See also S. M. Kassin, I. E. Dror, J.

Kukucka, and L. Butt, "The Forensic Confirmation Bias: Problems, Perspectives, and Proposed Solutions," Journal of Applied Research in Memory and Cognition 2 (2013): 42–52.

The most fundamental principle of science is the requirement to *generate and test alternative hypotheses* (i.e., Sir Karl Popper's concept of falsification was the philosophical core of the US Supreme Court Daubert ruling). Even 8th grade science students are typically taught this essential process *but too many science-uninformed, negligent psychotherapists, police investigators, judges, and trial attorneys (like those involved in the PA v Sandusky case) remain uninformed or misinformed on the essential nature of this process – or simply ignore this training*. Any criminal investigation, health care assessment-treatment, or analysis in hearings and trials that does not spend considerable time and attention discussing the "alternative investigative hypotheses" is defective and **a danger to the integrity of the legal system**. In my experience, most all well-trained PhD and MD professionals working in major medical and/or science centers understand and apply this essential process but far too many poorly trained professionals in the mental health and legal systems remain tragically uninformed or misinformed as to critical knowledge and methodologies regarding confirmation bias.

Training has been nationally widespread for years on the essential need to avoid confirmation bias. For example, ***the U.S. Department of Justice calls investigations via questioning of alternative hypotheses essential for the integrity of an investigation***. See Chris Newlin, Linda Cordisco Steele, et al, Child Forensic Interviewing: Best Practices, published by the U.S. Department of Justice... See, <http://www.ojjdp.gov/pubs/248749.pdf> September 2015, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention << *Alternative Hypotheses\_...* Contextually appropriate questions that explore *other viable hypotheses for a child's (or adult's) behaviors or statements are essential to the overall integrity of the interview.* >>

In stark contrast to proper conduct, on this record, PA v Sandusky demonstrates an historically egregious example of the dangers of extreme Confirmation Bias. In some of ***most essential evidence in this case***, Inv. Leiter recorded statements during the interview of BH on April 21, 2011. Inv. Leiter forgot his microphone was "live" and inadvertently disclosed in detail an extraordinarily improper Confirmation Biased strategy (ie., Leiter claimed he "knew" beforehand what witnesses **should** say) . Even more importantly, Inv Leiter, in his recorded discussion also disclosed in detail the government's highly improper, deeply corrupt, systemic, abusive, repetitive process of manipulating witnesses' "memories" over and over again until the witness gave in and agreed with Inv. Leiter's pre-conceived version of the evidence. Inv. Leiter's disclosed, abusive, systemic government Witness Memory Manipulation strategy is unprecedented in my 30-years of experience reviewing cases throughout the US. (See, the April 21, 2011, recorded interview of alleged victim BH and detailed quotes/analysis below). Inv. Leiter's April 21, 2011 "taped confession" of a highly improper, abusive, government program of memory manipulation

of witnesses should have been one of the key issues at the trial of this matter including motions to exclude all witnesses who experienced the Government Memory Manipulation Interviews disclosed by Inv. Leiter. The science of Memory-False Memories is essential to understanding the improper-memory-contaminative nature of Inv. Leiter's interviewing methods was never properly explained to the jury in this case by an Expert Witness in Memory-False Memories. In addition, the essential history of similar abusive-manipulative interviewing programs (See, McMartin, Wenatchee, the dozens of RRM-MPD-DISS therapist malpractice cases with adults, state licensing prosecutions and revocations, the results of Special Agent K. Lanning's FBI Special Task Force, etc.) was never properly explained to the uninformed, misinformed, misled, jury.

According to noted experts Bruck and Ceci (2002), the concept of *interviewer bias* is a defining feature of leading-suggestive interviews. –like those documented in PA vs Sandusky. Interviewer bias (i.e. a type of Confirmation Bias) characterizes those interviewers *who hold a priori beliefs about the occurrence of certain events and who mold the interview to maximize disclosures that are consistent with those prior belief* (This is exactly the kind of abusive, case contaminating, memory manipulating process that Inv. Leiter “confessed” to in the recording of April 21, 2011. It is extraordinary that this most essential information was never presented to the uninformed, misinformed, misled jury in PA v Sandusky.)

One hallmark of such interviewer bias is *the single-minded attempt by an interviewer to gather only confirmatory evidence and to avoid all avenues that may produce disconfirming evidence. (This is, again, the highly improper, evidence-manipulative process that Inv. Leiter “confessed to” on April 21, 2011.* Again, it is extraordinary that this most essential information was never presented to the uninformed, misinformed, misled jury in PA v Sandusky.).

Thus, biased interviewers do not ask questions that might provide alternate explanations for the allegations or that might elicit information inconsistent with the interviewer’s hypothesis. In addition, biased interviewers do not challenge the authenticity of a witness’ report when it is consistent with their hypothesis. Even when witnesses provide inconsistent or even bizarre evidence, it is either ignored or interpreted within the framework of *the biased interviewer’s pre-conceived beliefs*. In contrast, when the witness’ statement is incongruent with what the biased interviewer believes, it will be challenged or pursued with repeated questions designed to manipulate the witnesses’ subsequent reports with the interviewer’s initial beliefs. (*As Inv. Leiter “confessed to” on April 21, 2011*). See, Bruck, Ceci, & Hembrooke, "The Nature of Children's True and False Narratives", Developmental Review. Volume 22, Issue 3, September 2002, Pages 520–554 plus many additional citations in the memory science section below.) Note that the Newly Discovered Evidence documenting the Memory Manipulation-Evidence Tampering method of interviewing used by civil attorney Shubin (discussed in detail later in this report) is

very similar to the improper government interviewing methods disclosed by Inv. Leiter. Again, none of this essential information was presented to the uninformed, misinformed, misled jury in PA v Sandusky

**4B3. Basic Essential Science-History:** “Fervently-Believed-In-But-False-“Memories” of abuse can be (and have been) induced in many *thousands* of adults, adolescents, and children via exposure to RRM-MPD-DISSL ideology and improper-leading-suggestive interviewing/therapy methods by police investigators, prosecutors, civil attorneys, family members, psychotherapists, etc. ( See, Special Agent Ken Lanning’s FBI Task Force national investigations of hundreds of alleged abuse cases and Prof Gail Goodman’s Nat. Assn. of Child Abuse and Neglect investigation of reportedly over 10,000 such cases, the “Memory Wars” research debate, State Licensing Board licensing revocation actions in multiple states against therapist-leaders of the RRM-MPD-DISSL movement, the improper-Memory Manipulation investigations in the McMartin, Wenatchee, Kelly Michaels, and other infamous-controversial cases, the many RRM-MPD-DISSL malpractice lawsuits against poorly trained, science-uninformed therapists, etc. as cited later in this report.). On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

The wave of “Day Care” prosecutions and other abusive mis-interviewing cases overturned by Appellate Courts and/or rejected by juries resulted in national science experts taking a very serious and sustained interest in reforming the abusive, memory-contaminating investigative methods used in such tragic cases. See, e.g., Bruck, M. and Ceci, S. (1995). ‘Amicus brief for the case of State of New Jersey v. Michaels presented by the committee of concerned social scientists. Psychology, Public Policy, and Law, 1, 272-322. The science world and the legal world began to work together to create rational, science-based standards for investigating cases and conducting proper non-abusive interviews.

The process of reforming investigative procedures to incorporate science-informed methods and standards was motivated by the rise of RRM-MPD-DISSL ideology that produced the “Memory Wars” and thus some of the most contentious science-therapy controversies in history. Years of research, clinical experience, and jury trial investigation and legal case records clearly documented and demonstrated that multiple methods -- including exposure to abusive-leading-suggestive-repetitive interviews (e.g. Inv. Leiter’s and Attorney Shubin’s methods in this case), misleading information provided by Police Interviews, Interviews/Therapy with Science Uninformed Therapists and Civil Attorneys, exposure to False and Misleading Ideas about “recovered repressed memories”, “blocked memories”, “buried memories”, and improper, leading, suggestive psychotherapy -- can and have induced ***Fervently-Believed-In-But-False-“Memories”*** of horrific abuse in many thousands of people (children,

adolescents, and adults). To reduce the risk of false memories and ***protect the integrity of the legal system***, the relevant scientific community and law enforcement have worked to create standards of care in abuse cases including :

MINIMAL STANDARDS FOR INVESTIGATIONS-TRIALS of ABUSE CASES:

A) It is essential that ***ALL interviews be properly recorded*** to permit proper review by supervising investigators, expert witnesses/consultants, judges, and defense attorneys. Such reviews are necessary to protect witnesses as well as ***protect the integrity of the legal system*** from abusive-leading-suggestive-repetitive questioning (such as Inv Leiter's and Attorney Shubin's methods in this case as Leiter's recorded discussion of April 21, 2011 and the reportedly newly discovered evidence of the Shubin-SS interview and investigative work of AJ Dillon.

***Failure to properly record and document each and every interview should be considered a powerful indicator of Negligence and/or local corruption in any abuse investigation with witnesses of any age.*** In my experience, from rural Alabama, Nebraska, and Texas to Palm Beach, Beverley Hills, Scottsdale, and downtown NYC, interviewers across the USA now ***record all interviews***. Why is this so important? ***Without a recording the potential memory contaminating effects of an interview cannot be assessed***, and we return to the pre-1990s “bad old days” when interviewers could abuse and manipulate witnesses at will (e.g. Wenatchee, McMartin, Kelly Michaels, Therapist Malpractice Cases such as Hamanne, Carlson, Burgus v Braun, and many other infamous cases).

**Recordings protect witnesses** from overzealous and/or gross negligent and/or corrupt-abusive interviewing. In contrast to national practice, on this record MANY of the interviews – perhaps even MOST (?) – were never properly recorded. Alternatively, how many were recorded and then erased to hide evidence the abusive, improper Government interviewing program as confessed to by Inv Leiter on April 21, 2011.

**Recordings also protect prosecutions.** If a witness’ “memory” reports change from one interview to the next – which apparently happened to multiple witnesses in PA v Sandusky. And IF there is no proper recording to review, ***then the prosecution cannot prove beyond a reasonable doubt that improper interviewing was not the cause of the “new memory”***. A properly science-informed jury will not convict given such an egregious government error as failing to properly record all interviews. The jury in PA v Sandusky was not properly informed of the relevant science, nor the relevant history, nor the abusively

improper interviewing-memory contaminative methods used in this case, nor the unsolvable (without a recording to review) question of percentage of a witness' "new memories" were created by improper interviewing?

B) it is essential that investigators be properly **trained in science-informed, abuse interview methods/protocols** to protect witnesses from misleading-suggestive-repetitive-coercive-unrecorded-abusive interviews from police-therapists-lawyers to (cf. in contrast, on this record, note the unprecedented-in-my-experience, highly improper interview methods well-documented in PA v Sandusky) and reduce the risk of memory contamination.

C) it is essential that *all non-normal alleged "memories" (like many in this case) be properly reviewed and explained to the Jury by a Memory-False-Memory-RRM-MPD-DISS expert witness who generates and walks the jury through evidence for alternative investigative hypotheses in such cases.* Experts should include a member of the relevant scientific community (that is, no local, science-uninformed psychotherapist pseudo-experts) reviewing the reliable and validity of the methodology of underlying research and the evidence in the case.

D) it is essential to *chart ALL interviews with ALL witnesses as to Date, Interviewer, Location, and who was in the room during the interview.* This essential "Interview Chart" should be properly updated and shared with opposing counsel in all cases with sufficient time prior to trial for competent preparation. Such an essential "Interview Chart" --- nor the information required to complete such a chart -- was apparently gathered and shared in time for competent preparation in PA v. Sandusky.

E). it is essential that *on each recorded interview the witness be asked to state ALL previous interviews* (if not, the government might interview witnesses over and over and over again and not properly disclose the number of interviews nor who was present in the room, nor the abusive and improper methods used in some interviews -- as described in Inv. Leiter's recorded discussion (April 21, 2011) discussing his practice of repeated, leading-suggestive-coercive interviews (see quotes from Inv. Leiter's April 21, 2011 recording later in this report).

F) it is essential that all investigators must be properly trained to understand that *they are NOT reliable "human lie detectors"* and must therefore search for corroborative evidence and test alternative investigative hypotheses not overly and improperly rely upon unreliable "clinical experience" or "clinical judgment" or detective "intuition" (See, relevant research quoted in this report).

G) it is essential that all investigators be properly trained to understand the necessity of **avoiding Confirmation Bias** by generating and testing **alternative hypotheses** of the case (including the alternative hypothesis that false/exaggerated pseudo-memories were generated from mis-interviews/improper therapy by psychotherapists, civil attorneys, and poorly trained/corrupt investigators

H) it is essential that witnesses should never be subjected to multiple (more than 2), unrecorded, repetitive, biased interviews-therapy by investigators, therapists, and civil attorneys offering financial payments for “new” abuse memories.

J) ALL complex memory cases – especially those lacking corroborative evidence – should involve a competent **Expert Witness in the Science (not “therapy”) of memory-false memory-contamination-science-history**. Such expert witnesses should be actual science experts and not local, science-uninformed psychotherapists -- to properly instruct the court, attorneys, and jury regarding the science-history of methods to evaluate “non-normal” memory claims including RRM-MPD-DISS “buried”, “blocked”, or “dissociated” memories that grow and/or transform and/or change over time. (Note memories do change over time – but memory claims regarding “buried”, “blocked”, or “dissociated” memories are Not Normal Memories and thus require expert witness explanation to avoid a misinformed, uninformed, jury as indicated on this record in PA v Sandusky.

*On this record, in my opinion, the PA vs Sandusky investigation and trial FAILED to meet ANY of these essential minimal standards of a reliable investigation and properly-fair trial – as required by the basic foundational, and essential science-history. A key remaining questions remains -- where the historic, egregious, catastrophic failures documented in PA vs Sandusky the result of Negligence or local corruption driven by political-economic forces? (See, detailed analysis of this question later in this report).*

See, citations to Loftus, McNally, Ofshe/Watters, Barden, Ceci/Bruck, Pendergrast, Snedden, Rabinowitz, Spanier, and many others in this report. See also, Michael E. Lamb, Yael Orbach, Irit Hershkowitz, Phillip W. Esplin and Dvora Horowitz, “A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol,” Child Abuse & Neglect, Volume 31, Issues 11-12, November, December 2007, Pages 1201-1231 ; and. Michael E. Lamb, Irit Hershkowitz, Yael Orbach, & Phillip W. Esplin, Tell Me What Happened: Structured Investigative Interviews of Child Victims &

Witnesses, Wiley Series in Psychology of Crime, Policing and Law, Sept. 2008 (and ALL citations and studies contained therein).

**4B4. Basic Essential Science-History:** Science has conclusively demonstrated that *human memory is not a DVD nor video recording but is subject to manipulation, change, and even whole-creation of false memories via a variety of influences* (e.g., Alleged victims subjected to repetitive, leading, interviews-discussions-therapy with family members, therapists, investigators, civil lawyers – all of these types of potentially memory contaminating experiences are documented in PA v Sandusky).

A brief history of memory contamination research should include the famous research questions ... “How fast were the cars going when they collided?” and “How fast were the cars going when they smashed into each other?” (See, E. Loftus and Palmer, 1974). *This one-word difference in questioning created different memories* in the minds of witnesses. Those who were asked about cars that “smashed” into each other remembered faster car speeds and some even membered broken glass in the scene – when in fact no broken glass existed at all. *Inducing false memories with a few simple questions was far easier than anyone had anticipated* prior to these studies and the decades of research that followed. See, See Loftus, E., Our changeable memories: legal and practical implications. Science and Society. Nature Reviews: Neuroscience Volume 4, March 2003, page 231- 235.

Given our scientific knowledge of human memory, juries cannot reliably evaluate an alleged victim’s reported “memories” unless they also review *the actual questions asked in sequence* on a proper *recording*. *Thus recording all investigative interviews is essential to the integrity of investigations and jury trials*. This is also why psychotherapists or police investigators or civil attorneys conducting leading, suggestive, and improper conversations with witnesses in UNRECORDED interviews-therapy can indeed create, new, horrific, detailed, Fervently-Believed-In-But-False-”Memories” of abuse. This is also why *the extraordinary failure to properly record all interviews is such a serious and fatal error that it should be viewed as evidence of actual corruption in an investigation* (as in this case in both the government’s investigation and the negligent Freeh Report). (See, Freeh Group Report and the multiple reviews by Thornburgh, PSU BD review, Corman Report and others. The Freeh Group apparently failed to record interviews and also failed to even interview multiple key witnesses – both quite fatal methodological flaws.)

Many years of research has shown memory contaminative processes can generate “new” and/or false memories via *source confusion/source amnesia* (e.g., being trained to consider dreams, nightmares,

imagination, hypnotic images, etc. as reliable indicators of “memories”). As Prof. Dan Schachter, former Chairman of Psychology at Harvard University has noted, “...false memories ... in studies often include bits and pieces of memories that are melded together... In these and other situations, the content of a past event or *imagining* becomes “unglued” from its original source and mistakenly connected to another “memory”... “contents and sources of past experiences mistakenly put together -- *it is easy to see how it could give rise to a strong subjective conviction that a false memory is real.*” See, Coyle, Joseph in D. Schachter (Editor), *Memory Distortion: How Minds, Brains, and Societies Reconstruct the Past*, page 24; See also, D. Schacter. *The Seven Sins of Memory*, Houghton Mifflin, 2001. p.4. See also, “Human memory is *not like a photograph album, a collection of cassettes, compact discs or videos or any other accumulative archive of the past*. Rather, memories are fragmentary, condensed, often distorted and inaccurate representations of experience. -Martin A. Conway (review in *Nature*). See additional citations infra and supra to the work of Ceci, Bruck, Loftus, and other memory experts.

**Just one hour can be sufficient to implant false memories in some cases.** How many interviews/therapy sessions were conducted in a case? How many of these interviews/therapy sessions were not recorded? How many interviews/therapy sessions does it take to produce detailed, false memories? E.g. William Bernet, M.D., Case Study: Allegations of Abuse Created in a Single Interview, *Journal of the American Academy of Child and Adolescent Psychiatry*, 36:7, July 1997, pp. 966, 970. In many litigation malpractice suits against RRM-MPD-DISS therapists, I personally reviewed multiple cases where vulnerable witnesses were led — in just a few hours — to fervently believe in detailed, horrific, but later proven to be false memories of abuse. Reviewing proper recordings is the only real defense – for witnesses and prosecutions – from the alternative hypothesis of interview-induced false memories. On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

**A FALSE MEMORY CAN BE FERVENTLY BELIEVED and REPORTED — SUCH REPORTS ARE “BELIEVED-IN-FALSE-MEMORIES” and THUS NOT LIES:**

Once a false memory is induced can the victim tell the difference between true and false memories? *Research indicates that once tainted, a false memory can seem just as real to the witness as other memories.* See, Stephen J. Ceci and Maggie Bruck, *Jeopardy in the Courtroom*, 1995, p.218, 220; See, also, McNally, R.J., Lasko, N.B., Clancy, S.A., Macklin, M.L., Pitman, R.K., and Orr, S.P. 2004. Psychophysiological responding during script-driven imagery in people reporting abduction by space aliens. *Psychol. Sci.* 15: 493–497. [Consistent, emotionally powerful, stories from highly educated people -- e.g. alien abduction “memories” -- can be quite consistent, filled with much detail, emotionally

conveyed, and very compelling to listeners -- yet quite false.] See also, Ceci, S.J., Crotteau, M., Smith, E., & Loftus, E.W. Repeatedly Thinking about a Non-event: Source Misattribution among Preschoolers. Consciousness & Cognition., Vol 3, 388-407 (1994); See also, Loftus, E. F. (2002) Memory Faults and Fixes. Issues in Science & Technology (publication of the National Academies of Science), 18, #4, pp 41-50; Loftus, E.F. & Davis, D. (2006) Recovered Memories. Annual Review of Clinical Psychology. 2, 469-498 ; Loftus, E. F. (2005) Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. Learning and Memory, 12, 361-366; Mazzoni, G. and Memon, A. Imagination Can Create False Autobiographical Memories, Psychological Science, Vol. 14, No. 2, March 2003 pg. 186-193 and other relevant research.

The science of memory and memory contamination is an essential feature of a proper review of such investigations. Thus clearly , ***every jury in such cases should be properly educated about at least the essentials of basic science-history in this field*** -- including the mouse trap study, imagination inflation, source amnesia/confusion, error rates, reliability and validity concepts, as well as the history of improper interview cases such as Wenatchee, McMartin, Kelly Michaels, Wee Care, Jordan Minnesota, and the hundreds of RRM-MPD-DISS therapy generated cases investigated and debunked by the FBI Task Force (Lanning) and thousands investigated and debunked by Goodman and others). Understanding the key basics of the research work of Loftus, McNally, Ekman, and other international scientists is essential to ***protect the integrity of the legal system***. This research work explores the conditions under which ***witnesses can provide accurate reports about past episodes but also shows convincingly that examiners (including psychotherapists and civil attorneys) who use suggestive or leading questions may introduce serious distortion into witness recollections***. Indeed, some of the recent research has revealed that some witnesses can be rather easily induced to create detailed narrative recollections of events that never happened (e.g , false memories of being attacked by a wild animal, riding in a hot air balloon, etc ). ***These witnesses may seem firmly convinced that their memories are real even when they are not. Protecting witnesses against repeated interviews, leading and suggestive questioning, and other memory contaminative processes is thus an essential part of a competent investigative process*** (and the opposite of Inv. Leiter's and Attorney Shubin's highly improper methods). See, e.g., Daniel L. Schacter, Jerome Kagan, and Michelle D. Leichtman, True and False Memories in Children and Adults: A Cognitive Neuroscience Perspective, *Psychology Public Policy, and Law*, American Psychological Assn, 1995, Vol 1, No. 2, 411-428 and other citations in this report. See the "Mousetrap Study", Ceci, et al, Repeatedly Thinking About a Non-Event: Source Mis-Attributions among Preschoolers, Consciousness and Cognition, Vol. 3, 388-407, 1994.

**ALL COMPETENT POLICE INVESTIGATORS, JUDGES, LAWYERS, and  
THERAPISTS SHOULD KNOW THAT HUMAN MEMORY IS QUITE MALLEABLE AND CAN  
BE TAINTED, CHANGED, or CREATED BY IMPROPER INTERVIEWING:**

“Memories are precious. They give us identity. They create a shared past that bonds us with family and friends. They seem fixed, like concrete, so that if you stepped on them they would still be there as they always were.... But memories are not fixed. Everyday experience tells us that they can be lost, but they can also be drastically changed or even created. Inaccurate, false memories can sometimes be just as compelling and "real" as an accurate memory. ... Studies show that you can do more than change a detail here and there in someone's memory. You could actually make people believe that a childhood experience had occurred when in fact it never happened. Examples include being lost in a shopping mall for an extended period of time, being rescued by a lifeguard, surviving a vicious animal attack ... or even going on a hot air balloon ride. None of these events actually happened [ to people who recalled "memories" of them] but people became quite convinced these were true "memories". ... These studies and many more like them, show that ***people can develop beliefs and memories for events that definitely did not happen to them. They can do this when fed strong suggestions. They can even do this when induced to imagine the experiences. Large changes in autobiography can be achieved quickly.***”

– Prof. E. Loftus, internationally renowned memory researcher

***Psychological science has not yet developed a reliable way to classify memories as true or false without corroborating evidence.*** Moreover, it should be kept in mind that many false memories have been expressed with great confidence....” ... “To reiterate the main points: memory is more prone to error than many people realize. ***Our memory system can be infused with compelling illusory memories of important events.*** These grand memory errors have contributed to injustices that could have been avoided or minimized.” See Loftus, E., Our changeable memories: legal and practical implications. Science and Society. Nature Reviews: Neuroscience Volume 4, March 2003, page 231- 235.

‘Our memories are constructive. They’re reconstructive. ***Memory works ... like a Wikipedia page: you can go in there and change it, but so can other people.***’ — Professor Elizabeth Loftus, PhD, memory researcher

***” Even the precious memories of our childhood can actually be shaped and reshaped like a ball of clay .... false memories – recollections that feel like memories, but which are not based on any real occurrence – are experienced all the time.*** And the consequences of such false memories can be very real. ***Believing fictitious representations of reality can affect anything in our lives, potentially causing***

***real joy, real upset, and even real trauma*** ... Any event, no matter how important, emotional, or traumatic it may seem, can be forgotten, misremembered, or even be entirely fictitious. — Professor Julia Shaw, PhD, memory researcher.

“Studies confirm that jurors (laypersons who are not memory experts) routinely “over believe” eyewitness testimony. See, e.g., Sigler & Couch, Eyewitness Testimony, and the Jury Verdict, 4 N. Am. J. Psychol. 143, 146 (2002) (conviction rate by mock juries increased from 49 percent to 68 percent when a single, vague eyewitness account was added to the circumstantial evidence described in a case summary). Even when unreliable eyewitness identification is admitted, juries are quite likely to believe it.... Cross-examination cannot be relied on to address this problem. As the US Supreme Court has observed, “even though cross-examination is a precious safeguard to a fair trial, it cannot be viewed as an absolute assurance of accuracy and reliability.” Wade, 388 U.S. at 235. That is particularly true with victims of RRM as ***they often truly believe the mental images in their head are real, accurate “memories”***.

***The process of false memory creation is a serious problem for in the legal system*** because what most affects many jurors’ assessment of a particular eyewitness is the level of confidence expressed by the witness. See Cutler & Penrod, Juror Sensitivity to Eyewitness Identification Evidence, 14 Law & Hum. Behav. 185, 185 (1990); Lindsay et al., Can People Detect Eyewitness-Identification Accuracy Within and Across Situations?, 66 J. Applied Psychol. 79, 83 (1981). Importantly, cross-examination can be quite ineffective with a mistaken (albeit honest) eyewitness who is testifying as to ***“False-But-Fervently-Believed-In-Memories”*** with confidence and consistency ... See, e.g., State v. Clopton , 223 P.3d 1103, 1110 (Utah 2009) (“Cross-examination will often expose a lie or half-truth, but may be far less effective when witnesses, although mistaken, believe that what they say is true.”).

Despite popular misperceptions, research shows that ***witness confidence is quite often not a reliable, accurate indication of memory accuracy***. As one science report concluded, “[t]he outcomes of empirical studies, reviews, and meta-analyses have converged on the conclusion that the confidence-accuracy relationship for eyewitness identification is weak.” Brewer et al., The Confidence-Accuracy Relationship in Eyewitness Identification, 8 J. Experimental Psychol. Applied 44, 44-45 (2002). In addition, the confidence of eyewitnesses in actual cases, unlike in controlled experiments, may be infected by misleading feedback received in the investigative process (for example, an officer stating “good, you’ve told us what others have told us” – Inv. Leiter disclosed in this case or a science-uninformed psychotherapist (e.g Therapists Gillum and Macnab in this case) supporting a “survivor” reporting “buried-blocked-recovered inherently unreliable alleged “memories “of abuse. See supra n.6;

see also Wells et al., *7 Psychol. Sci. in Pub. Int.* at 45; Wells & Bradfield, "Good, You Identified the Suspect": Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience, *83 J. Applied Psychol.* 360, 374 (1998). Indeed, witness confidence can be affected by a host of factors that have no relation to reliability. See, e.g., Wells & Quinlivan, *33 Law & Hum. Behav.* at 11-12". Above excerpts are from the Amicus Brief of the American Psychological Association to the US Supreme Court in *Barion Perry v. State of New Hampshire*, [Docket No. 10-8974], 2012. Again, none of this essential information was properly presented to the uninformed, misinformed jury in this case.

**4B5. Basic Essential Science-History:** The science of Memory and False Memory has documented specific methods by which memories can be contaminated, changed, manipulated, transformed, *or falsely created without the witness being aware of memory changes*. The infamous cases of mis-interviewing discussed above led many States to expect and/or require *ALL interviews with alleged victims to be Audio or Video-Recorded and reviewed for abusive mis-interviewing*. (cf. On this record it appears that many or most interviews in this case were apparently NOT properly recorded – a level of negligence or corruption that is unprecedented-in-my-30 years of experience reviewing cases in many states. (See, the indicia of corruption and manipulative mis-interviewing documented by Inv. Leiter's recorded discussion of Apr 21, 2011 and the Newly Discovered evidence regarding Attorney Shubin's interviews).

***In this case it appears that an essential information needed to compile an "Interview Chart" for of ALL interviews conducted was never constructed nor shared*** as required for competent, honest, proper trial preparation. (E.g., All interviews recorded? Interviewers name listed? Location listed? Date listed? Who was present in the room listed?). Such information was not collected and not properly shared with defense attorneys in time for a proper analysis with a competent expert. The defense attorneys also failed (due to Negligence or corrupt sabotage of their client's case) to present the interview evidence they had (including Inv Leiter's historic confession of an abusive Government Memory Manipulation scheme) to a competent memory Science (not a therapist) Expert Witness in Memory-False Memory-Interviewing Methodology for proper analysis. The totality of such egregious errors in this very troubled case is unprecedented in my 30-year experience and provides additional indicia of corruption in this matter. (See the detailed analysis of Indicia of Corruption below). Note that a Transcript should be considered quite Worthless without a Recording. Tragically, I have discovered in many cases that transcripts are often NOT consistent with the actual recording.

**4B6. Basic Essential Science-History:** Science has documented a series of methods, procedures, and ideologies that increase the risk of inducing Fervently-Believed-In-But-False-“Memories”. Alleged victims/patients – after contemplation, memory misinformation, and indoctrination via interviews-therapy in RRM-MPD-DIS ideology – can become convinced that mental images (from movies-books, or a suggested by therapists (Gillum, Macnab, civil lawyers (Shubin) or improper investigative interviews (Leiter) are actual “memories. Such patients have –in thousands of cases become convinced that suggested images are actual and accurate “memories” of real trauma that were formerly “buried” “blocked” or “dissociated”. See, e.g. Garry, Maryanne; Manning, Charles G., Loftus, Elizabeth F., Sherman, Steven J (1996). "Imagination inflation: imagining a childhood event inflates confidence that it occurred". *Psychonomic Bulletin & Review* 3 (2): 208–214.

[doi:10.3758/bf03212420](https://doi.org/10.3758/bf03212420). See, also Dodier et al. presented a large meta-analysis of 139 studies involving 24,007 participants which found *a high link between fantasy proneness and “dissociative experiences”* as measured by the DES. See, also Merckelbach H, Otgaar H, Lynn S J. Empirical research on *fantasy proneness and its correlates* 2000-2018: a meta-analysis. *Psychol Conscious*; in press. See, Dodier O, Otgaar H, Lynn SJ. A critical analysis of myths about dissociative identity disorder. *AnnMed Psychol* 2021. <http://dx.doi.org/10.1016/j.amp.2021.10.007>.

See, also Laney, C and Loftus, E. *Traumatic Memories Are Not Necessarily Accurate Memories*, *Can J Psychiatry*, Vol 50, No 13, 2005. ... Some therapists argue that the hypothesized repression (blocking memories) is more likely to occur in response to specific types of trauma. In particular, Terr claimed that repeated traumas are more likely to produce repression. Freyd argued that repression is caused when a trauma is perpetrated by a loved one on whom one depends for the basic necessities of life. *These notions have virtually no credible, reliable, valid scientific support....* Another observation lends support to the idea that people can become quite emotional about events that they have not personally experienced. How often do people cry in movies? .... *If there is one lesson from this research, it is probably this: Just because a memory seems detailed, just because the person seems confident in it, and just because emotion is expressed when the memory is contemplated, does not mean it really happened.* See, e.g. Garry, Maryanne; Manning, Charles G., Loftus, Elizabeth F., Sherman, Steven J (1996). "Imagination inflation: imagining a childhood event inflates confidence that it occurred". *Psychonomic Bulletin & Review* 3 (2): 208–214. [doi:10.3758/bf03212420](https://doi.org/10.3758/bf03212420). See, also Dodier et al. presented a large meta-analysis of 139 studies involving 24,007 participants which found *a high link between fantasy proneness and “dissociative experiences” as measured by the DES*. See, also Merckelbach H, Otgaar H, Lynn S J. Empirical research on fantasy proneness and its correlates 2000-2018: a meta-analysis. *Psychol Conscious*; in press. See, Dodier O, Otgaar H, Lynn SJ. A critical

analysis of myths about dissociative identity disorder. Ann Med Psychol 2021. <http://dx.doi.org/10.1016/j.amp.2021.10.007>. See also, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, Springer International Publishing, ISBN 9783319633749

See also, Van Bergen, S., Horselenberg, R., Merckelbach, H., Jelicic, M., & Beckers, R. (2010). Memory distrust and acceptance of misinformation. *Applied Cognitive Psychology*, 24: 855-896. Post-event information can come from leading questions, statements made by others or suggestions of how events might have occurred (by lawyers, therapists, investigators, and judges). Since such suggested, improper memory encoding can lead to source amnesia and source monitoring errors and thus false memories, *witnesses who are exposed to suggestive questions or false RRM-MPD-DIIS information may encode the wrong, imagined details into their memory, convincingly claiming to have seen or experienced things they only imagined, dreamed, or “saw” in therapy, guided imagery, suggestive interviews, or hypnotic images.* *Such processes can lead to grave legal implications* as they can produce false testimony and wrongful convictions therefore, it is important that interrogation practices are carefully conducted and videotaped for a proper analysis of leading, suggestive, or coercive -- potentially memory contaminative -- questioning.” See, also Johnson, M.K., Hashtroudi, S., & Lindsay, D.S. (1993). Source monitoring. *Psychological Bulletin*, 114(1): 3-28. Again, apparently none of this essential information was properly shared with the apparently uninformed, misinformed jury in this case.

**4B7. Basic Essential Science-History: Human are not reliable “Human Lie Detectors” without reviewing actual corroborative evidence. Even so,** poorly trained investigators (Leiter and others), therapists (Gillum, Macnab) and attorneys (Shubin) are VERY often not aware of this essential scientific information. False hubris and science-uninformed beliefs in “professional experience” can lead to Confirmation Bias and induced false memories consistent with the assumptions of science-uninformed interviewing professionals (eg. see Leiter’s recorded discussion and newly discovered Shubin evidence on this record).

Science-uninformed legal professionals, investigators, and therapists too often turn courtrooms, interviews, and therapy sessions into gambling casinos. Science-uninformed judges fail to fulfill their “gatekeeper” function and force juries to make choices that no person can reliably, accurately make – assessing “memory” claims ***without corroborating evidence***. Science demonstrates that humans – including Investigators, Psychotherapists, Lawyers, Judges, and All other Humans are **unreliable lie detectors in the absence of corroborating evidence**. The science is clear that humans cannot **reliably**

distinguish true from false verbal statements in the absence of corroborative evidence. Professionals such as police, psychotherapists, and investigators often (gullibly) believe they can reliably detect false patient reports but the science shows they cannot and, in fact, professionals *are typically no better at this task than laypersons.* See, Vrij, Aldert, Granhag, P. and Porter, S. (2010) Pitfalls and opportunities in nonverbal and verbal lie detection. *Psychological Science In The Public Interest*, 11 (3). pp. 89-121. ISSN 1529-1006 10.1177/1529100610390861 “The final error that we will highlight is that professional lie catchers (i.e., including GALs and psychotherapists) tend to overestimate their ability to detect deceit. **Research has consistently shown that when professional lie catchers and laypersons are compared, “professionals are more confident in their veracity judgments but are NO more accurate”** Emphasis added. See, Rosen, G. M. and Phillips, W.R., A Cautionary Lesson from Simulated Patients, *Journal of the American Academy of Psychiatry and Law*, 32, 132-133, (2004); See, McNally, RJ, Troubles in Traumatology, *Canadian Journal of Psychiatry* 50:815–816 (2005) (showing experienced expert clinicians routinely misdiagnose — fooled by false reports — of PTSD in veterans whose records prove they never actually experienced any combat).

During the past several decades, the detection of deception has come under increasing empirical scrutiny (e.g., see Vrij, 2008). One reason for the enormous scientific interest in deception is *the increasingly recognized problems that have arisen in the legal system as a result of failed credibility assessments, such as wrongful convictions* (e.g., Porter & ten Brinke, 2010; Vrij, Granhag, & Porter, 2010). Assessing the credibility of reports of sexual victimization – often in the absence of corroboration – presents a significant challenge for legal decision makers. This study examined the accuracy of observers in discriminating genuine and fabricated sexual assault allegations. **"Results indicated that overall accuracy was below chance (M = 45.3%)"** See, Kristine A. Peace, Stephen Porter and Daniel F. Almon, *Sidetracked by emotion: Observers' ability to discriminate genuine and fabricated sexual assault allegations*, Legal and Criminological Psychology (2011), The British Psychological Society.

See also, K. Peace and S. Porter, A Longitudinal Investigation of the Reliability of Memories for Trauma and other Emotional Experiences, *Appl. Cognit. Psychol.* 18: 1143–1159 (2004). The nature of traumatic memories has become a major focus of cognitive research and a heated debate in psychology (e.g. Read, 2001) .... **"Traumatic images tended to persist in memory with NO apparent impairment,** whereas features of positive memories were subject to considerable distortion, regardless of interview style. The findings contribute to the understanding of the impact of trauma on memory with the passage of time.” See also, Ivan Mangiulli, Henry Otgaar, Marko Jelicic & Harald Merckelbach, A Critical Review of Case Studies on Dissociative Amnesia (April, 2021) *Clinical Psychological Science*, DOI:

10.1177/21677026211018194 (and all citations and research discussed therein). See also, Henry Otgaar, Olivier Dodier, Maryanne Garry, Mark L. Howe, Elizabeth F. Loftus, Steven Jay Lynn, Ivan Mangiulli,, Richard J. McNally, and Lawrence Patihis., Oversimplifications and Misrepresentations in the Repressed Memory Debate: A Reply to Ross, Journal of Child Sexual Abuse, July 2022.

See also, Richard J. McNally (2021): Are memories of sexual trauma fragmented? *Memory*, DOI: 10.1080/09658211.2020.1871023 at <https://doi.org/10.1080/09658211.2020.1871023> ... ***[Findings do not support the existence of special memory mechanisms that are unique to experiencing traumatic events.]*** ; See also, Elke Geraerts, Dragica Kozaric 'Kovac'ic', Harald Merckelbach, et al, Traumatic memories of war veterans: Not so special after all. *Consciousness and Cognition* 16 (2007) 170–177.... ***traumatic memories were not qualitatively different from neutral memories*** with respect to their stability and sensory qualities. The severity of PTSD symptoms was not significantly correlated with dissociative experiences. Our findings do not support the existence of special memory mechanisms that are unique to experiencing traumatic events. *See also*, K. Peace and S. Porter, A Longitudinal Investigation of the Reliability of Memories for Trauma and other Emotional Experiences, *Appl. Cognit. Psychol.* 18: 1143–1159 (2004). ***The nature of traumatic memories has become a major focus of cognitive research and a heated debate in psychology (e.g. Read, 2001)*** ...***Traumatic memory imagery tended to persist in memory*** whereas features of positive memories were subject to considerable distortion, regardless of interview style. The findings contribute to the understanding of the impact of trauma on memory with the passage of time.

We should note that “heated debates” over “controversial notions” have clearly ***not been accepted by the relevant scientific community and thus fail the test of a competent Frye and also Daubert analysis leading to exclusion to protect the integrity of the legal system.*** On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

**4B8. Basic Essential Science-History: THE LIMITS ON CLINICAL KNOWLEDGE AND “CLINICAL JUDGMENT” ARE OFTEN UNKNOWN TO POORLY TRAINED THERAPISTS and LEGAL PROFESSIONALS.** The Mental Health System (therapists) lags far beyond the rest of Health Care in using science-evidence-based treatments. FRYE and/or DAUBERT hearings are supposed to ***protect the integrity of the legal system*** from such pseudo-science, unreliable methodologies. : Psychotherapists often do not receive reliable, accurate feedback in therapy work settings. Without accurate feedback they CANNOT develop reliable, improved expertise or “judgment” over time.

See, Tracey, T.J., Wampold, B.E., Lichtenberg, J.W., Goodyear, R. K., (2014) Expertise in Psychotherapy: An Elusive Goal, American Psychologist, Vol. 69, No. 3, 218-229. “In a review of expertise across professions, Shanteau (1992) identified several professions in which practitioners develop expertise, which he defined as increased quality of performance that is gained with additional experience. These professions, which demonstrate there can be a relation between experience and skill, include astronomers, pilots, chess masters, mathematicians, accountants, and insurance analysts. Shanteau *also identified several professions for which expertise was not demonstrated / including psychotherapists*. See also, Garb, H. N., & Boyle, P. A. (2003). Understanding why some clinicians use pseudoscientific methods: Findings from research on clinical judgment. In S. O. Lilienfeld, S. J. Lynn, & J. M. Lohr (Eds.), Science and pseudoscience in clinical psychology (pp. 17–38). New York, NY: Guilford Press. See also, W. M. Grove and P. E. Meehl, Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic) Prediction Procedures: The Clinical-Statistical Controversy, *Psychology, Public Policy, and Law* (1996) Vol. 2, No. 2, 293-323 1076-8971/96/

As a former faculty member in major University Departments of Medicine (Surgery) and Psychology (Clinical-Developmental) and also Law, I am well aware that over the past century many components of the health care system — surgery, radiology, laboratory testing, internal medicine, pharmacological systems — became science-driven and far more effective and reliable. Courts and families are too often unaware that this transformation — from the widespread use of unreliable methodologies (junk science) to the widespread use of reliable science-based methodologies has, in many ways, *not yet occurred in the mental health system*. See, “A century ago, American medicine was an unregulated and unscientific craft, *with little research to support its practices*. In 1910, *The Flexner Report*, published by early 20th century Abraham Flexner of Harvard Medical School, under the auspices of the Carnegie Foundation for the Advancement of Teaching, exposed the sorry state of medical practice, leading to major reform of both the training and practice in medicine. Among other things, the report revealed that half of the nation’s medical schools were sub-par, and many were closed down as a result. The remaining schools adopted rigorous admissions and training standards for their students, focusing on the scientific approach to medical education and practice that is still evident today. *Tragically, unknown to many legal professionals, clinical psychology, social work, psychiatry, and counseling, are currently in a tenuous situation similar to where medicine was in the early 20th century*. For example, the past President of the Association for Psychological Science, Prof. Walter Mischel, has stated “*the current disconnect between psychological science and clinical practice is an unconscionable embarrassment*”. See, e.g., West, Catherine, ‘An Unconscionable Embarrassment’, Association for Psychological Science, Observer, October 2009; Also see, Mischel, W. Connecting Clinical Practice to Scientific Progress,

Psychological Science in the Public Interest, Vol 9, No 2, 2009 ; See, also Baker, T., McFall, R. & Shoham, V., Current Status and Future Prospects of Clinical Psychology: Toward a Scientifically Principled Approach to Mental and Behavioral Health Care, Psychological Science in the Public Interest, Vol. 9, No. 2 (2009); See also, Harrington, A., Mind Fixers: Psychiatry's Troubled Search for the Biology of Mental Illness, W. W. Norton & Company; 1st edition, April 16, 2019 ; Dawes, R.M., House of cards: Psychology and psychotherapy built on myth, New York: Free Press (1997).

**4B9. Basic Essential Science-History: PTSD symptoms other “trauma” mental health symptoms and DSM diagnoses, are often NOT reliable indicators of actual trauma or abuse.** PTSD symptoms are often NOT reliable indicators of actual, historic trauma events — such symptoms also occur with FALSE-believed-in memories as well as real memories of trauma and such symptoms are also easily faked. For example, most “flashbacks” are of unknown origin and traumatized veterans have reported dying and other impossibilities in their “flashbacks”.

See, “Consistent, emotionally powerful, stories of memories from highly educated people — e.g. alien abduction “memories” -- can be quite consistent, filled with detail, and very compelling -- yet quite false.” See, McNally, R.J., Lasko, N.B., Clancy, S.A., Macklin, M.L., Pitman, R.K., and Orr, S.P. 2004. Psychophysiological responding during script-driven imagery in people reporting abduction by space aliens. *Psychol. Sci.* 15: 493–497.]. During my clinical psychotherapy and assessment work at the Palo Alto VA Hospital/Stanford Medical School, I interviewed combat veterans who “died” in their “flashbacks” — obviously so-called “flashbacks” are NOT reliable depictions of accurate “real” memories.

In sum, competent, properly trained, science-informed psychotherapists and investigators (cf. unlike the negligent, science-uninformed investigators, lawyers, and therapists involved in this case) readily admit that without actual, corroborative evidence they CANNOT reliably assess the accuracy of patient-witness verbal reports. ***It is a serious licensing-ethics violation for any therapist to claim they have ANY reliable method for evaluating the origin or accuracy of abuse allegations without corroborative evidence.*** (cf. On this record, compare this basic, essential knowledge to the incompetent- or corrupt, fully documented Confirmation Bias reportedly displayed in this case by Inv. Leiter and Therapist Gillum as on this record they both disclosed the firm (irrational, incompetent) belief that they (magically) “knew” what patients-witnesses were supposed to tell them and then they apparently worked via improper, repetitive, coercive, abusive, improper, mis-interviewing to get patients-witnesses to change their “memories” to fit a pre-conceived – confirmation biased- narrative).

***4B10 Basic Essential Science-History:*** Human memory is a RECONSTRUCTIVE PROCESS NOT A RECORDING – not like a video recording and NOT a DVD record that can be “recovered” or played back at will. Human memory is subject to post-event manipulation, contamination, and change via many processes but especially repetitive-leading interviews, improper-misleading psychotherapy, and/or suggestive mis-information from lawyers, media, and other sources (e.g., On this record, all of these memory-contaminating influences were documented in PA vs Sandusky). *This is why proper interviewing methodology is ESSENTIAL to the integrity of the legal process and why review of ALL RECORDINGS of all interviews is essential to a fair investigation and trial.* Psychological science has not yet developed a reliable way to classify memories as true or false in the absence of corroborative evidence. In some of the most significant and important psychological research in history, Prof. E. Loftus has demonstrated that ***ONE WORD in ONE QUESTION can induce a FALSE memory that did not exist prior to the ONE WORD in ONE question.*** This is why corroboration is so essential in accessing memories and this is why ALL conversations are potential sources of memory contamination and *why ALL interviews MUST BE PROPERLY RECORDED.* Memory is malleable and subject to contamination. “To reiterate the main points: memory is more prone to error than many people realize. Our memory system can be infused with compelling illusory memories of important events. These grand memory errors have contributed to injustices that could have been avoided or minimized.”

See, Barden RC: Reforming the Mental Health System: Coordinated, Multidisciplinary Actions Ended “Recovered Memory” Treatments and Brought Informed Consent to Psychotherapy. *Psychiatric Times.* 2014;31(6): June 6, 2014.

See Loftus, E., Our changeable memories: legal and practical implications. *Science and Society.* *Nature Reviews: Neuroscience* Volume 4, March 2003, page 231- 235;

See, Bruck, M. and Ceci, S. (1995). ‘Amicus brief for the case of State of New Jersey v. Michaels presented by the committee of concerned social scientists. *Psychology, Public Policy, and Law,* 1, 272-322

See, Loftus, E.F. & Davis, D. (2006) Recovered Memories. *Annual Review of Clinical Psychology.* 2, 469-498;

See, Loftus, E. F. (2005) Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. *Learning and Memory,* 12, 361-366.

See, Ofshe, R. and Watters, E., *Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria.* 2nd Edition. University of California Press, 1996;

See, Acocella, J., *The Politics of Hysteria*, The New Yorker, April 6, 1998, pg. 64-79; See also, Barden, R. C., Foreword in Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened*

and What We Need to Learn from It, [Springer International Publishing](#), ISBN 9783319633749 ; See also, Loftus, E. The Myth of Repressed Memory, False Memories and Allegations of Sexual Abuse, St. Martin's Press, 2013.

See, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, [Springer International Publishing](#), ISBN 9783319633749 ;

See, Loftus, E. *The Myth of Repressed Memory, False Memories and Allegations of Sexual Abuse*, St. Martin's Press, 2013; See, McNally, R.J. (2003) *Remembering Trauma*, Cambridge, MA: Belknap Press/Harvard University Press.

See, Pope H., Oliva P., and Hudson J., 'Repressed memories: The scientific status of research on repressed memories' in Faigman, D.L., Kaye, D.H., Saks, M.J., and Sanders, J. (eds) (2012) *Science in the law: social and behavioral science issues*, St. Paul, MN: West Group, 807–913; and

See, Piper A., Lillevik L., and Kritzner R., 'What's wrong with believing in repression? A review for legal professionals' (2008) 14 *Psychology Public Policy and Law*, 223–42.

See, Barden, R.C., *Memory and Reliability: Developments and Controversial Issues*. In *Witness Testimony in Sex Cases*, Eds. Pamela Radcliffe, Anthony-Heaton Armstrong, Gisli Gudjonsson, and David Wolchover, Consultant Editor: Sir Anthony Hooper, Oxford University Press, March 2016.

See, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, [Springer International Publishing](#), ISBN 9783319633749.

**4B11 Basic Essential Science-History: It is essential for Investigators, Attorneys, Therapists, and Journalists to understand the history of the “Memory Wars” and the collapse of the “Recovered Memory-Multiple Personality Disorder-Dissociative Ideology-Therapy Movement of the 1990s) (the novel notions of RRM-MPD-DISS fail Frye analysis ).** History has documented that error-ridden RRM-MPD-DISS ideology taught to patients-clients via science-uninformed-misinformed-unethical therapists (e.g. On this record, Gillum and Macnab) have created false memories and damaged the integrity of the legal and mental health systems. These apparently science-uninformed “therapists” should be properly questioned under oath at Legislative and Licensing Investigations. Note also that, reportedly, collusive memory contaminating discussions among alleged victim witnesses also took place (e.g. See the Newly Discovered information provided by “sting investigator” AJ Dillon who has alleged that Attorney Shubin and Therapist Macnab ran memory contaminative processes groups for alleged victims … and thus cross-contaminated “expected” memories worth apparently millions of dollars in settlement payoffs ). More importantly, the well-documented, highly improper police investigations in this case (See, Inv. Leiter’s April 21, 2011 recorded discussion of a program of systemic Government

witness memory contamination) failed to employ minimal standards for proper, ethical interviews. This information was apparently not properly shared with the jury in this case.

History documents that tens of thousands of families were destroyed by these very same RRM-MPD-DISS ideologies and methods in the 1990s before a tsunami of lawsuits and licensing revocations largely shut down the once thriving RRM-MPD-DISS therapy industry. See, Barden RC: Reforming the Mental Health System: Coordinated, Multidisciplinary Actions Ended “Recovered Memory” Treatments and Brought Informed Consent to Psychotherapy. *Psychiatric Times*. 2014;31(6): June 6, 2014.

The history of the “Memory Wars” —shows that many thousands of families were destroyed by therapist induced false memories of abuse. This mental health system-legal system debacle was reformed by many lawsuits and licensing revocations. Although this history — is very well known and very well documented in articles, textbooks, published legal case decisions, and international media – apparently **none of this essential information was properly presented to the jury in this case.** (See detailed citations below). See, Ofshe, R. and Watters, E., *Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria*. 2nd Edition. University of California Press, 1996; See, Acocella, J. The Politics of Hysteria, *The New Yorker*, April 6, 1998, pg. 64-79; See also, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, Springer International Publishing, ISBN 9783319633749 ; See also, Loftus, E. *The Myth of Repressed Memory, False Memories and Allegations of Sexual Abuse*, St. Martin’s Press, 2013 **and hundreds of additional citations See eg.**<sup>3</sup>

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<sup>3</sup> Barden, R.C., (2001) Informed Consent in Psychotherapy: A Multidisciplinary Perspective, *The Journal of the American Academy of Psychiatry and the Law*, Vol 29, No. 2, pgs. 160-166.

Barden RC: Reforming the Mental Health System: Coordinated, Multidisciplinary Actions Ended “Recovered Memory” Treatments and Brought Informed Consent to Psychotherapy. *Psychiatric Times*. 2014;31(6): June 6, 2014.

Bruck and Ceci, Amicus Brief for the Case of State of New Jersey V. Michaels Presented by Committee of Concerned Social Scientists, 1 *Psychology, Public Policy and Law* 272 (1995)

Ceci, S.J., & Bruck, M. (1993b). Children's recollections: Translating research into policy. SRCD Social Policy Reports.

Ceci, S.J., & Bruck, M. (1995). Jeopardy in the courtroom: A scientific analysis of children's testimony. Washington, D.C.: American Psychological Association.

Ceci, S.J., Crotteau, M., Smith, E., & Lotus, E.W. Repeatedly Thinking about a Non-event: Source Misattributions among Preschoolers. *Consciousness & Cognition*, Vol 3, 388-407 (1994).

Dodier, O., Otgarr, H. , Lynn, S. , A Critical Analysis of Myths About Dissociative Identity Disorder, *Medico-psychological annals*, August 2021. <https://doi.org/10.1016/j.amp.2021.10.007>

Grove, W. M. and Barden, R.C. (2000) Protecting the Integrity of the Legal System : The Admissibility of Testimony from Mental Health Experts Under Daubert/Kumho Analyses, *Psychology, Public Policy and Law*, Vol 5, No. 1, 234-242. Excerpts reprinted in AF, George (Prof. Stanford Law School), *Evidence: University Casebook Series*, Foundation Press - West Group, New York, 2002, pg. 688.

Houben, S. T. L., Otgaar, H., Roelofs, J., Merckelbach, H. (2018). Lateral eye movements increase false memory rates. *Clinical Psychological Science*, 6, 610–616. <https://doi.org/10.1177/2167702618757658>.

Loftus, E. F. (2002) Memory Faults and Fixes. *Issues in Science & Technology* (publication of the National Academies of Science), 18, # 4, pp 41-50.

**4B12. Basic Science-History, Psychotherapy Ethics, and Licensing Violations: Counseling or therapy with alleged “trauma” victims during an ongoing criminal investigation and prior to trial should be carefully examined as a potential form of tampering with the memories of witnesses.**

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Loftus, E.F. & Davis, D. (2006) Recovered Memories. Annual Review of Clinical Psychology. 2, 469-498.

Loftus, E. F. (2005) Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. Learning and Memory, 12, 361-366.

Mazzoni, G. and Memon, A. Imagination Can Create False Autobiographical Memories, Psychological Science, Vol. 14, No. 2, March, 2003 pg. 186-193.

Mangiulli, I., Otgaar, H., and Jelicic, M., A Critical Review of Case Studies on Dissociative Amnesia, Clinical Psychological Science (APS), June 8, 2021. <https://doi.org/10.1177/21677026211018194> ... **Dissociative amnesia, defined as an inability to remember important autobiographical experiences, usually of a stressful nature, is a controversial phenomenon.** We systematically reviewed 128 case studies of dissociative amnesia reported in 60 articles that appeared in peer-reviewed journals in English over the past 20 years (2000–2020). Our aim was to examine to what extent these cases met core features of dissociative amnesia. All cases were about reports of autobiographical memory loss, but the evidence offered in support of a dissociative amnesia interpretation was often **weak and plagued by an ambiguous heterogeneity with respect to nature, etiology, and differential diagnoses of alleged memory loss.** Most case studies failed to rule out plausible alternative explanations of dissociative amnesia, such as ordinary forgetting and malingering.”

McNally, R.J., Lasko, N.B., Clancy, S.A., Macklin, M.L., Pitman, R.K., and Orr, S.P. 2004. Psychophysiological responding during script-driven imagery in people reporting abduction by space aliens. Psychol. Sci. 15: 493–497.

Nourkova, V.V., Bernstein D.M., and Loftus, E.F. 2004. Altering traumatic memories. Cognition and Emotion 18: 575–585.

Patihis, L. and Pendergrast, M. , Reports of Recovered Memories of Abuse in Therapy in a Large Age-Representative U.S. National Sample: Therapy Type and Decade Comparisons, Clinical Psychological Science, 1-19, 2018.... "The potential hazards of endeavoring to recover ostensibly repressed memories of abuse in therapy have previously been documented. Yet no large survey of the general public about memory recovery in therapy has been conducted. In an age-representative sample of 2,326 adults in the United States, we found that 9% (8% weighted to be representative) of the total sample reported seeing therapists who discussed the possibility of repressed abuse, and 5% (4% weighted) reported recovering memories of abuse in therapy for which they had no previous memory. **Participants who reported therapists discussing the possibility of repressed memories of abuse were 20 times more likely to report recovered abuse memories than those who did not.** Recovered memories of abuse were associated with most therapy types, and most associated with those who reported starting therapy in the 1990s. We discuss possible problems with such purported memory recovery and make recommendations for clinical training."

Schacter, D.L. and Slotnick, S.D. 2004. The cognitive neuroscience of memory distortion. Neuron 44: 149–160. Schmolck, H., Buffalo, E.A., and Squire, L.R.

Thomas, A. K., Bulevich, J. B., & Loftus, E.F. (2003) Exploring the role of repetition and sensory elaboration in the imagination inflation effect. Memory & Cognition, 31, 630- 640.

LINK Editorial Board, Comparing the NICHD and RATAC Child Forensic Interview Approaches - Do the Differences Matter? *THE LINK: Official Newsletter of the Intl Soc. for the Prevention of Child Abuse and Neglect* , Vol 20, No 1, Fall 2011.

Michael E. Lamb, Yael Orbach, Irit Hershkowitz, Phillip W. Esplin and Dvora Horowitz, “A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol,” Child Abuse & Neglect, Volume 31, Issues 11-12, November, December 2007, Pages 1201-1231

Michael E. Lamb, Irit Hershkowitz, Yael Orbach, & Phillip W. Esplin, Tell Me What Happened: Structured Investigative Interviews of Child Victims & Witnesses, Wiley Series in Psychology of Crime, Policing and Law, Sept. 2008 (and ALL citations and studies contained therein).

Including all research cited within the works listed above.

Science and history have shown that memories can be manipulated and radically changed by post-event information, leading interviews and therapy. Is that what happened in this case? Is that the reason multiple alleged victims' "memory" reports apparently changed substantially AFTER exposure to coercive-repeated interviews with Inv. Leiter and crew and AFTER interviews-therapy with Attorney Shubin and therapist Macnab. See, Branaman, T. F. & Gottlieb, M. C. Ethical and Legal Considerations for Treatment of Alleged Victims: When Does It Become Witness Tampering? Professional Psychology: Research and Practice, 2013, Vol. 44, No. 5, 299–306. The ethics of such practices is FAR more doubtful when the therapist is financially involved with a lawyer seeking millions of dollars in payment for transformed "new memories" of abuse. See for example, Attorney Shubin and Therapist Macnab's reportedly joint efforts resulting in new "changed memories" and payoffs of millions of dollars in cases apparently lacking proper vetting, investigation, or corroborative evidence of abuse. (See, Newly Discovered evidence of this report).

**4B13. Basic Science, Psychotherapy Ethics, and Licensing Violations: Science un-informed psychotherapists (See, e.g. Gillum, MacNab, and Chambers in this case) often violate the international human rights (and licensing duties, statutory duties, ethics codes, and common-sense fairness) of patients by failing to obtain proper informed consent.** On the record of this case, it appears that the therapists involved, and all of them -- failed to understand professionally, competently, or ethically -- WHAT is required to obtain informed consent from the alleged victim patients involved in this case. I have written on such issues in one of the leading journals in the world. See, Barden, R.C., (2001) Informed Consent in Psychotherapy: A Multidisciplinary Perspective, The Journal of the American Academy of Psychiatry and the Law, Vol 29, No. 2, pgs. 160-166. I incorporate all references and citations in that publication into this report. It is crucial to understand that informed consent is NOT just some statutory duty but rather *a key Quality Control process in ALL psychotherapies which requires maintaining an honest, open, trustworthy relationship with the patient*. Telling the patient negligent, false, misleading, harmful RRM-MPD-DISS misinformation while failing to tell the patient the honest truth about the contentious debates over science issues, the unreliability of the process, and the known dangers of RRM-MPD-DISS therapy is not just an informed consent rules/ethics violation it is a violation of the Standard of Care for ALL psychotherapies by social workers, counselors, psychologists, psychiatrists or any other mental health worker.

Note that a proper, ethically-informed, science-informed consent discussion must include *the known risks of Fervently-Believed-In-But-False- "Memories"* that "come back" or were "buried" or "blocked" or "dissociated". Such a documented discussion must include *a complex, detailed, proper,*

*professional, and acceptable consent process which would require instruction and discussion about many essential issues including:*

A) ***the nature of reconstructive memory and how memory is subject to contamination*** (e.g., source confusion/amnesia, misinformation, multiple interviews, etc.)

B) ***the history of the “Memory Wars”*** and the tsunami of tens of thousands of Fervently-Believed-In-But-False-“Memories”, the harm of false abuse claims, etc.

C) ***the risk of mixing imagination-dreams-movie images with memory***

D) ***that the relevant scientific community has rejected the novel notions of RRM-MPD-DIIS including “recovered repressed memories” as a “pernicious myth”*** and other critical information required for any patient to make an informed choice as to “counseling” treatments.

“Informed consent is the process in which a health care provider educates a patient about the risks, benefits, and alternatives of a given procedure or intervention. The patient must be competent to make a voluntary decision about whether to undergo the procedure or intervention. Informed consent is both an ethical and legal obligation of medical practitioners in the US and originates from the patient's right to direct what happens to their body. Implicit in providing informed consent is an assessment of the patient's understanding, rendering an actual recommendation, and documentation of the process. *The Joint Commission requires documentation of all the elements of informed consent* "in a form, progress notes or elsewhere in the record." The following are the *required elements for documentation* of the informed consent discussion: (1) the nature of the procedure, (2) the risks and benefits and the procedure, (3) reasonable alternatives, (4) risks and benefits of alternatives, and (5) assessment of the patient's understanding of elements 1 through 4.

It is the obligation of the provider to make it clear that the patient is participating in the decision-making process and avoid making the patient feel forced to agree to with the provider. The [health care] provider must make a recommendation and provide their reasoning for said recommendation... Obtaining informed consent in medicine is process that should include: (1) describing the proposed intervention, (2) emphasizing the patient's role in decision-making, (3) discussing alternatives to the proposed intervention, (4) discussing the risks of the proposed intervention and (5) eliciting the patient's preference (usually by signature). *Discussion of all risks is paramount to informed consent in this context.* Most consent includes general risks, risks specific to the procedure, risks of no treatment and alternatives to treatment.” See, Shah P, Thornton I, Turrin D, et al. Informed Consent. StatPearls Publishing; 2022 Jan. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK430827/>.

Such essential, minimal informed consent rules, principles and requirements have been in effect for decades. Many of the “Memory Wars” lawsuits that shut down clinics and resulted in licensing revocations focused on just these kinds of informed consent violations.<sup>4</sup>

On this record, there is evidence indicating that ***case-involved psychotherapists Gillum and Macnab are apparently “true believers” in controversial, unreliable, novel RRM-MPD-DISSOCIATION ideology but no evidence that they know or understand the science and history debunking such controversial notions.*** Similarly, there is no evidence that such local therapists understand the hazards of confirmation bias, or the risks of coercive-multiple interviews, or the history of thousands of cases of false memories induced by therapist malpractice. Given the defense attorneys negligent (or corrupt case sabotage) failure to investigate the influence of these local therapists on alleged victims’ memories as well as their failure to obtain a competent memory-false memories expert who would have required such an investigation, the record I have to review is limited. Future public investigations the multiple types of misconduct in the investigation-trial of this case should obtain detailed sworn depositions-testimony from all mental health professionals involved in PA v Sandusky using questions written by competent science and mental health ethics experts. These therapists should also be properly investigated for evidence of multiple licensing violations (eg., dual conflicting roles, failure to obtain informed consent, etc).

**4B14. Basic Essential Science-History:** Coping and Resilience Science, Positive Psychology, and competently conducted Cognitive Behavioral Therapy offer a variety of effective science-validated methods for reducing multiple forms of mental health and emotional disturbance. On this record, none of the alleged victims in this case were apparently truthfully informed by any therapist involved (e.g. Gillum, Macnab) regarding the dangers and risks of the ***inherently unreliable process of recovering*** “blocked”, “buried”, “dissociated” “memories that come back” vs. the known benefits of multiple ***more effective treatment alternatives*** including scientifically validated Coping and Resilience Science, Positive Psychology, Cognitive Behavior Therapy, and others.

It is ESSENTIAL in such matters to obtain and review ALL ***certified complete mental health records*** of ALL alleged victims. This is especially true for all alleged victims who A) were in therapy

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<sup>4</sup> The history of informed consent is instructive. See also, Jochen Vollmann, Rolf Winau, Informed consent in human experimentation before the Nuremberg code, BMJ's Nuremberg issue, British Medical Journal 1997;314:439 See also, The Nuremberg Code and the Declaration of Helsinki, See also, “Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10”, Vol. 2, pp. 181-182. Washington, D.C.: U.S. Government Printing Office, 1949.] and Nuremberg Code text from: <https://history.nih.gov/display/history/Nuremberg+Code>

during this investigation and trial and B) radically changed their “memory” reports during the investigation and trial. These complete mental health records should be obtained and reviewed by a competent EXPERT for evidence of RRM-MPD-DISSOCIATION malpractice, misinformation, failures of informed consent, dual role ethics violations (acting in dual conflicting roles as a therapist to a patient but also a consultant to the State in the same case – as Gillum and Macnab appear to have done on this record -- would be a serious ethics/dual conflicting role violation and should be properly reported to the PA licensing board.) (cf. On this record, during the corrupt, improper, often unrecorded, improperly repetitive, unethical investigative-therapist practices in this case involved permitting a RRM-MPD-DISSOCIATION therapist, Mr. Gillum, sit in on a police investigative interview (!) – egregious misconduct – for the investigator and for the therapist -- that is unprecedented in my 30 year experience reviewing hundreds of cases in dozens of jurisdictions.

Apparently safer, less controversial, and potentially more effective alternative treatments were not discussed nor offered to patients in this case. see, Coping and Resilience Science treatments. See, e.g., S. Southwick and D. Charney, *Resilience: The Science of Mastering Life’s Greatest Challenges*, Cambridge University Press, Second Edition, 2018; Seligman, M. and Steen, *Positive Psychology Progress: Empirical Validation of Interventions*, American Psychologist, July 2005 ; See, Seligman, M. E. P. (2002). *Authentic happiness: Using the new positive psychology to realize your potential for lasting fulfillment*. New York, NY: Free Press ; See, Seligman, M. E. P., & Csikszentmihalyi, M. (Eds.). (2000). *Positive psychology [Special issue]*, *American Psychologist*, 55(1) ; See also, Linley, P. A., & Joseph, S. (Eds.). (2004). *Positive psychology in practice*. Hoboken, NJ: Wiley ; See also, Burns, D. (Stanford Medical School), *Feeling Good: the New Mood Therapy*, Quill Harper Collins Publishers (January 1, 2000) ; See, King, L. A., Hicks, J. A., & Krull, J., & Del Gaiso, A. K.. (2006). Positive affect and the experience of meaning in life. *Journal of Personality and Social Psychology*, 90, 179–196 ; See, Feder, A., Nestler, E. J., & Charney, D. (2009). Psychobiology and molecular genetics of resilience. *Nature Reviews*, 10, 446–466 ; See, Charney, D. S. (2004). Psychobiological mechanisms of resilience and vulnerability: Implications for successful adaptation to extreme stress. *American Journal of Psychiatry*, 161, 195–216 ; See, Bonanno, G. A. (2005). Resilience in the face of potential trauma. *Current Directions in Psychological Science*, 14, 135–138 ; See, Vaillant, G. E. (2002). *Aging well: Surprising guideposts to a happier life from the landmark Harvard study of adult development*. New York, NY: Little, Brown & Co.

**4B15. NEGLIGENCE or CORRUPTION SERVING POLITICAL-ECONOMIC INTERESTS? How is it possible that so much essential history and science evidence was never properly shared with the uninformed, misinformed, jury in PA vs Sandusky?**

What essential information was never shared with the jury in PA v Sandusky?

-- the well-documented history of RRM-MPD-DISSL memories – like many in this case – being REJECTED as inherently unreliable by the relevant scientific community and excluded from multiple courts properly applying FRYE or DAUBERT-KUMHO analyses to evidence presented at complex, detailed, intensive hearings often involving multiple world experts.

-- the well-documented history of the *thousands of false “recovered repressed memory” claims of criminal sexual abuse that were investigated and debunked by the FBI* (Spec. Agent Kenneth Lanning Special Task Force) and the National Center for Child Abuse and Neglect (Gail Goodman, Ph.D). or

-- the well-documented history of years of intense international *scientific debates and a wave of national litigation* -- “The Memory Wars” – regarding the controversial “pernicious myth” of recovered repressed -- “buried”, “blocked”, dissociated”, “trauma memories” (much like several of the alleged “memories” reported in PA v Sandusky) ;

-- the well-documented history of decades of science showing the trauma victims REMEMBER and do not forget in “fragmented” portions of memory to be recovered over time ;

-- the well-documented history of cases like McMartin, Wenatchee, Kelly Michaels and many others showing how systematic, abusive, repetitive interviewing methods (like those described in detail in Inv. Leiter’s April 21, 2011 taped discussion) can produce horrific, detailed, yet quite false memories.

-- the well-documented history of *many psychotherapy malpractice lawsuits* that successfully shut down most of the RRM therapy industry as widely reported in the international news media for years. See, e.g. Belluck, P. Memory Therapy Leads to a Lawsuit and Big Settlement [\$10.6 Million], The New York Times, Page 1, Column 1, Nov. 6, 1997; See, Belluck, P. She Recovered Memories, Then 10 Millions in Damages, The New York Times, Nov 9, 1997, Sec. 4, Week in Review, page 2, Column 3 ; See, United Press International, Woman wins \$10 M in false memory suit, Chicago, Ill. November 4, 1997; See, Gustafson, Paul. Jury awards \$2.5 million in lawsuit against psychiatrist: 'Memories' were induced. Minneapolis/St. Paul Tribune, January 25, 1996, 1B ; See also, Guthrey, M. and Kaplan, T., 2nd Patient Wins Against Psychiatrist: Accusation of planting memories brings multi-million (\$2.5) dollar verdict. St. Paul Pioneer Press, Jan. 25, 1996, 4B ; See, Ann Zimmerman, Cult of Madness: Seeking help for depression, Martha Hurt turned to therapists. That's when her insanity truly began, Dallas Observer Oct 14, 1999; See, also, Wallace, C.G., Idaho Falls Post Register, "State board suspends psychologist's license," July 3, 1996, p. A-8 ; See, Duran, Sarah. Man wins therapy lawsuit and \$2.1 Million, Tacoma Washington, The News Tribune, January 13, 2001 ; See, Rovella, David E. , Malpractice suit nets \$2.1 million in mental health case, THE NATIONAL LAW JOURNAL, February 22, 2001; See, Mooney, Tom. Recovered Memory Rejected: Judge rules out key element in landmark case. The Providence Journal (Rhode Island). April 28, 1999, etc.

*The Essential History of the RRM-MPD-DISS movement leaders was apparently not shared with the jury in PA v Sandusky: Why? (e.g., On this record, it appears that Gillum and Macnab and also attorney Shubin as well as many others (See “RRM” evidence from the case record section below). were all “believers” in this novel, very controversial, unproven, unreliable RRM-MPD-DISS ideology, methods, and practices). On this record, it appears that the essential history of malpractice litigation, licensing revocations, and other documented misconduct of leaders of the “Recovered Repressed Memory” Movement was apparently unknown to everyone involved in confused PA vs Sandusky investigation and trial. None of this information was apparently offered to the misled jury in this case.*

**For example, reportedly:**

— Dr Bennett Braun, MD. Former President of ISSD and Chief Editor of “Dissociation” was sued leading to a world record settlement. Dr Braun’s clinic was also closed and his medical license was surrendered to the State of IL Licensing Board following prosecution by the Illinois Attorney General. Dr Braun’s license – after years of suspension was restored – and then his license was reportedly surrendered again and this time permanently for drug offenses. In addition, Dr Braun has been on in many lawsuits as widely reported by the media. Several of these were listed by the State of Illinois in the formal complaint against Dr. Braun by the Attorney General's Office including but not limited to: Shanley v. Judith Peterson, Braun, et al. ; Schwidersky v. Peterson, Braun, et al. ; Benoit v. Assoc. Mental Health Services ; Higgins v. Rush Presbyterian St Luke's Medical Center, Braun, et al. ; Becker v. Rush Presbyterian St Luke's Medical Center, Braun, et al. ; Bloom v. Braun, et al. ; Dale v. Braun, et al. ; Kreger v. Braun, et al. ; Doe v. Robins, Braun et al. ; Department v. Braun and others. This list includes the most famous of all "recovered memory" cases Burgus v. Braun, reportedly the largest psychiatric malpractice settlement in history. See, Belluck, P. (1997, November 6). Memory therapy leads to a lawsuit and big settlement. *The New York Times, page 1, col 1.* This report appears in hundreds of AP publications, TV shows, and radio stations worldwide. Virtually all MPD and RMT clinics in North America were closed following this news. Apparently, none of this historic information on the credibility of the RRM-MPD-DISS ideology that figure so prominently in the case was properly shared with the jury in PA v Sandusky. Such information is also essential in a properly litigated FRYE hearing on this novel ideology.

— Dr Bessel van der Kolk, MD (VDK) was reportedly fired (“released”, “let go”, “contract not renewed”) from Harvard Medical School for multiple reasons including reportedly a deposition conducted by Dr RCB Barden in a RI federal case. The deposition documented serious misconduct (false statements to the NH v Hungerford court) and exposed serious questions about whether VDK ever actually conducted the research for his “Fragmentary Nature of Trauma Memories” research. For example, VDK reportedly admitted that Danya Vardi, VDK’s 2nd named author in the paper offered to the Hungerford court, was actually prosecuted and found guilty of **research fraud** by Federal/Harvard investigation panel

prior to VDK giving their joint study to the court — the fraud conviction was apparently not honestly reported to the court in that NH criminal trial. The Federal District Court in Rhode Island reportedly then ordered Dr. VDK to produce his alleged data for the “Fragmentary Nature of Trauma Memory” for review of accuracy and credibility. Dr. VDK reportedly refused to comply with the Federal Court order, fled from the process server, dropped out of the relevant cases and years later claimed in sworn deposition testimony that the “only copy of his data” on the essential “fragmentary nature of trauma memories” study “burned up in a fire”, a fire that VDK never reported to fire, police or hospital officials. No other witness to the alleged “fire” apparently exists. See, pg 171 of the May 4, 2005, Videotaped deposition of B. van der Kolk, MD in Bonse v. Archdiocese of St Paul and Minneapolis, Court File No. 62-C4-02-11412, Second Judicial District, Ramsey County, Minnesota. VDK was also reportedly fired from his Trauma Clinic amidst allegations that he abused employees. VDK’s expert testimony and analysis was reportedly excluded as **unreliable** following a DAUBERT hearing in State of New Hampshire v. Hungerford and State of New Hampshire v. Morahan 698 A.2d 1244 (N.H. 1997). VDK’s expert testimony and analysis was also excluded as **unreliable** following a DAUBERT hearing in a Neb case, Rivers v. Father Flanagan’s Boys Town, Doc 1024, Case No. 743, Nebraska State Court Judge Sandra L. Dougherty, November 25, 2005 resulting in another case dismissal, Duffy v. Father Flanagan’s Boys Town, Case No. 8:03CV31, United States District Court for the District of Nebraska, Memorandum and Order of January 26, 2006. VDK’s expert opinions on “trauma memories” were reportedly again excluded as **unreliable in Franklin v. Stevenson, 987 P.2d 22 (1999)** as the Utah Supreme Court noted the ”evidence clearly did not meet the initial foundational showing of ***reliability***” ... “Not only has this court held that **unreliable** techniques are inadmissible as evidence, but also that any expert testimony based upon unreliable techniques is also **unreliable and inadmissible.... the necessary threshold reliability of these techniques was not established in the instant case.”**

— Dr Renee Fredrickson, PhD. Author of the RMT foundational book “Repressed Memories”. Dr RF was sued, paid settlement, and was punished by MN licensing board with restriction on practice. See, “Before the Minnesota Board of Psychology, Stipulation and Consent Order of May 7, 1999 In the Matter of Renee Fredrickson, Ph.D., L.P. License No. LP2653... "It is hereby ordered that the Licensee is placed in a Restricted and Conditional status and that all other terms of this stipulation are adopted and implemented by the Board this 7th day of May, 1999." See, e.g. American Psychological Association MONITOR, Recovered-memory lawsuit is settled out of court, Vol. 29, Number 9 -September 1998 ; See, Lerner, Maura, ***Psychologist barred from treating cases involving false memories***, Minneapolis/St. Paul Tribune, June 3, 1999.

— Dr George Greaves, PhD. RMT expert and **Past President** of Intl Society for the Study of Dissociation. His *license was permanently revoked* for abusing multiple patients using hypnosis and

“dissociation” to obtain sexual access to vulnerable patients.... “Despite his personal knowledge of the patient's extreme vulnerability due to emotional disorders.... [Dr Greaves} repeatedly hypnotized the patient for the purpose of engaging in sexual intercourse.” See, “Before the Georgia State Board of Examiners of Psychologists, Docket Number 93-598 , AG NO. 64PB-CA-97300-92, In the Matter of George B. Greaves, Ph.D. , Consent to license revocation signed April 1, 1994.

— Dr Colin Ross, MD. Another **Past President** of ISSD. Dr Ross was reportedly sued ending in settlement, testimony excluded from Tx v Harris case following a Daubert hearing for unreliable methods (junk science), testimony reportedly excluded from Hamanne vs Humenansky (MN) for unreliable methods (junk science). See, Texas vs. Harris. Associated Press, “Texas man suspected of raping older women claims he suffers from multiple personality disorder”, Washington Post, National Desk Sept. 19, 2011; and see, *“Expert witnesses disagree on validity of multiple personality disorder”* by Sonny Long, Victoria Advocate News, September 20, 2011 Edna, Texas; and see, Platenberg, G. Jury sentences convicted rapist to life in prison. Victoria Advocate News, Sept. 30, 2011. The court excluded the testimony of the defense expert witness ( psychiatrist Colin Ross, MD) who testified regarding the defendant’s “multiple personalities”, “dissociated memories”, etc. The court found the testimony regarding Dissociative Identity Disorder (DID) [ ... a variant of Repressed Recovered Memory -Multiple Personality Disorder ] was **controversial, unreliable, and not accepted by the relevant scientific community.**” Dr Ross has also produced unusual theories about controlling “energy” from his eyes. See, “Dr. Colin Ross Demonstrates How He Sends a Beam of Energy From His Eyes” at <https://vimeo.com/1449829>

— Dr Judith Herman, MD was reportedly arrested by Federal agents for multiple drug violations, lost prescription privileges, punished by MA licensing board, and paid large fines. See, July 5, 1995, Boston Globe, “US Attorney settles Drug Lawsuit with Cambridge Psychiatrist (fine paid and loss of prescription privileges). “The United States of America seeks civil penalties against the defendant for numerous violations of the Comprehensive Drug Abuse Prevention and Control act of 1970, 21 U.S.C. §§ 801 et seq..” . Federal Complaint at pg 2. “on numerous occasions during the period relevant to this Complaint, Herman used her DEA registration to purchase controlled substances from wholesale drug distributors. Specifically, Herman purchased significant quantities of Schedule III narcotic and non-narcotic controlled substances, including Fiorinal with Codeine, Idenal, and Butalbital, and Schedule IV controlled substances such as Diazepam, Flurazepam, and Halcion. Each of these controlled substances has a high potential for abuse and poses a risk to the user of psychological or physical dependence” at pg. 3 of the Federal Complaint. “On March 16, 1994 representatives of the DEA and the Board visited the Collective and spoke with Dr. Herman. Dr Herman openly acknowledged her actions, voluntarily surrendered her DEA registration at that time...” See, page 4 of the MA ST Bd of Medicine Complaint.

— Dr Daniel Brown, PhD – opinions reportedly excluded from the RI vs. Quattrocchi case following a Frye-Daubert hearing for unreliable expert testimony. [ His cross examination reportedly exposed ethics violations and misrepresentations of research]. See, State of Rhode Island v. Quattrocchi, C.A. No. P92-3759 (R.I. 1999) [on remand from the Rhode Island Supreme Court 681 A.2d 879 (R.I. 1999)]. Dr Brown apparently has no history of obtaining Federal or State research grants.

— Dr Judith Peterson, PhD, was reportedly indicted by a Federal Grand Jury in Texas and criminally prosecuted by the US DOJ for implanting “recovered memories” and thus creating “dissociated splits” (MPD) in order to charge insurance to treat the fabricated symptoms. The case ended in a mistrial (too many jurors had to drop out of the very long trial). The co-defendant hospital was reportedly closed and sold. See, Criminal Charges Filed in Recovered Memory Case. December 1, 1997. Psychiatric Times, Psychiatric Times Vol 14 No 12, Volume 14, Issue 12. See, See, U.S.A. v. Judith Peterson, Ph.D., et al., U.S. Southern District of Texas, Crim. Case No. H-97-237, James H. Deatley, U. S. Attorney.

— Dr Constance Dalenberg, PhD – Her opinions were reportedly excluded as unreliable following a Frye-Mack-Daubert hearing in Doe vs. Archdiocese (MN is a Frye state.) [ See, John Doe v. Archdiocese of St. Paul, Case No. 62-C9-06-003962, December 8, 2009 and affirmed by the Minnesota Supreme Court on July 25, 2012, John Doe v. Archdiocese of St. Paul, 817 N.W.2d 150 (Minn. 2012). In testimony at that hearing, Dr Dalenberg admitted to refusing other scientists access to review her research data. She also admitted to later **destroying the only copy** of her essential data set and “nobody else” viewed such data.

— Dr Phillip Coons, MD. RMT expert psychiatrist. Dr Coons admitted that **he “destroyed” the only copy of his most important data** on repressed memories and dissociation and that no other person has apparently ever seen Dr. Coons’ alleged data. See, Barden, R.C., Deposition of P. Coons, Hurt v. Ash et al. (Tx) Sept 20, 2000 at page 223... “8 Q. And do you still have the raw data for that 9 study? 10 A. No. 11 Q. Where did it go? 12 A. Well, as I said, I've -- I've not kept that 13 data. 14 Q. Meaning that it was destroyed? 15 A. Yeah, I -- I threw it out. 16 Q. So were you the one who personally destroyed 17 it, or did you hire somebody else to do it? 18 A. No, I personally destroyed it.”

**4B16. Basic Essential Science-History:** As noted in this report, on this record, it appears that **NONE** of the science-history uninformed Legal Professionals (prosecutors, defense attorneys and judge) associated with this case seemed aware of the history of the “Memory Wars” one of most important chapters in the history of the Mental Health System in the U.S. Similarly, on this record, it appears that **nobody associated with this case seems aware of the history of the many Frye-Daubert-Kumho hearings excluding such “junk science” testimony from “pieced together”, “recovered”, “buried”, “blocked” or “dissociated” memories**, nor the many lawsuits successfully suing

and some reportedly bankrupting RRM-MPD-DISS therapists for some of the kinds of practices described in this case, nor the national and international news stories about these cases-suits-licensing revocations, nor the state licensing board revocation proceedings that ended the practices of several leaders of the recovered repressed memory movement. The alternative hypothesis is that these legal professionals were aware but improperly (improperly?) kept all of this information from the jury.

Histories of these internationally reported events have been published in leading professional and science journals and in medical textbooks as well as international media including page one, col. one of the NY Times, hundreds of Associated Press newspaper articles, the BBC, NBC Dateline national TV broadcast, many magazines, and many other outlets. There were many such lawsuits and licensing cases over a period of years resulting in the closing down of clinics practicing such dangerous forms of psychotherapy. This was one of the most infamous chapters in the history of the US mental health system. I participated in many of these cases, hearings, and licensing actions to protect the safety of the public and *protect the integrity of the legal system.*

I have also published histories of these events in leading scientific and professional outlets such as Oxford University Press. (See, Dr Barden's resume). Many of these cases received national or international press coverage. See, Hanson, Cynthia, Dangerous Therapy, Chicago Magazine, June, 1998. "The [\$10.6 Million] Burgus settlement is said to be the largest sum ever awarded in a psychiatric malpractice suit." See, Rierden, A., "When a buried truth wants out, is it real?" The New York Times, April 24, 1994, Section 14 CW, p. 1, Connecticut Weekly Desk. "R. Christopher Barden, the lawyer-psychologist who is representing Mrs. Downing, said he has talked to hundreds of women across the country who have undergone recovered memory therapy and that their stories are strikingly similar. He called the psychological technique one of the biggest consumer frauds of recent times." McKenna, M.A.J., "Abuse' backlash builds: 'Victims' deny 'memories,' sue therapists," The Boston Herald, April 8, 1994, p. 45 ; See, Ann Zimmerman, Cult of Madness: Seeking help for depression, Martha Hurt turned to therapists. That's when her insanity truly began, Dallas Observer Oct 14, 1999 ; Johnson, P.M., "Patients sue psychologist over false abuse memories: Repressed memory cases on the rise nationwide," Idaho Falls Post Register, January 30, 1995, p. A-1 ; See, In the Matter of the License to Practice Psychology: Mark D. Stephenson, License No. Psy-253, Before the Board of Psychologists, State of Idaho, Case No. PSY-03-95-005. "At issue was the treatment of female patients who initiated complaints to the Board. They said through hypnotic procedures, Dr Stephenson implanted false memories of sexual abuse into their minds. The State filed a complaint alleging that respondent violated the American Psychological Association (APA) ethical standards in his treatment of the female patients. The board ordered

respondent's license suspended for three years."; Duran, Sarah. Man wins therapy lawsuit and \$2.1 Million, Tacoma Washington, The News Tribune, January 13, 2001 ; Lief, H. , Patients Versus Therapists: Legal Actions Over Recovered Memory Therapy, Psychiatric Times, November 1999 Vol. XVI Issue 11 ; Lief, HI & Fetkewicz, JM. (1999) Casualties of recovered memory therapy: The impact of false allegations on accused fathers. In Review of Psychiatry, Vol. 1., RC Friedman & JI Downey, Eds., 115-141 ; Mooney, Tom. Recovered Memory Rejected: Judge rules out key element in landmark case. The Providence Journal (Rhode Island). April 28, 1999; AP News Wire story, Psychiatrist loses license over cult abuse recovered memory allegations. Chicago, Friday Oct. 8, 1999.

**Publications on the History of the Rise and Fall of the RRM-MPD-DISS ideology that figured so prominently in PA v Sandusky but was never properly shared with the jury.**

See, e.g. Barden RC: Reforming the Mental Health System: Coordinated, Multidisciplinary Actions Ended "Recovered Memory" Treatments and Brought Informed Consent to Psychotherapy. Psychiatric Times. 2014;31(6): June 6, 2014.

See, e.g. Barden, R.C., (2016) Memory and Reliability: Developments and Controversial Issues. In *Witness Testimony in Sex Cases*, Eds. Pamela Radcliffe, Anthony-Heaton Armstrong, Gisli Gudjonsson, and David Wolchover, Consultant Editor: Sir Anthony Hooper, **Oxford University Press**, Foreword by Lord John Thomas, Chief Justice of England and Wales.

See, Belluck, P. *Memory Therapy Leads to a Lawsuit and Big Settlement [\$10.6 Million]*, The New York Times, **Page 1, Column 1**, Nov. 6, 1997.

See, e.g. Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, Springer International Publishing, ISBN 9783319633749. Preface by R. Chris Barden, Ph.D., JD.

Thus a key investigative hypothesis in this case — essential to the integrity of this investigation — has never been properly investigated. *The theory is that the alleged victims in this case were defrauded by negligent, "recovered memory" therapists in PA — including Therapist Macnab (who was reportedly working with civil Attorney Shubin) and therapist Gillum who reportedly spent 3+ years in "treatment" with an alleged victim before the patient reported "memories" of criminal abuse.* Why haven't the certified-complete office forms, all billing records, and all mental health treatment records of the alleged victims been properly reviewed by a national expert? Was this failure due to Negligence or a deliberate joint effort to sabotage this case and produce a rapid, certain conviction?

On this record, no other national expert in the field of therapist malpractice, misconduct, and licensing violations has reviewed these records and none testified at the science-ethics-uninformed PA v Sandusky trial. On the records reviewed thus far this case appears to contain significant evidence supporting the alternative hypothesis that some or all of the *alleged victims were indoctrinated into the controversial, novel, pseudoscientific ideology of RRM-MPD-DISSL including “recovered repressed memory” therapy, “traumatic amnesia”, “dissociated memories” “pieced together memories” “recovered trauma memories” and even “speaking to an “inner child personality”* (See, alleged victim MS’s book on how he recovered his “memories” and other cites to the record below ) and similar very controversial, unproven, inherently unreliable novel notions that have been *soundly rejected by the relevant scientific community* (as a “pernicious myth”) and also excluded by multiple courts in multiple states following competent FRYE or DAUBERT hearings. Apparently little or none of this essential information was shared with the jury in PA v Sandusky.

**4B17. Basic Essential Science-History:** Therapist Licensing Revocations: The well-documented history of nationally reported *licensing revocations of leaders of the RRM-MPD “therapy” movement was apparently unknown to all of the science and history uninformed legal professionals in this case.* See, AP News Wire story, Psychiatrist loses license over satanic allegations. Chicago, Friday Oct. 8, 1999; See, also, Wallace, C.G., Idaho Falls Post Register, "State board suspends psychologist's license," July 3, 1996, p. A-8, and others.

**4B18. Basic Essential Science-History of Frye and Daubert-Kumho hearings:** *The well known, published, and widely discussed Science-History of multiple Frye-Daubert-Kumho hearings excluding “recovered memory” alleged victim testimony and expert testimony in cases like PA v Sandusky was apparently unknown to ALL of the legal professionals in this case.* Specifically, such evidence (expert testimony and alleged victim “memories”) was excluded following Frye and Daubert-Kumho hearings because RRM-MPD-DISSL novel notions of “buried-blocked-dissociated “memories”, methods, and science have been *rejected (not accepted) by the relevant scientific community* as inherently unreliable “therapy world” evidence not for use in the legal system.

The novel RRM-MPD-DISSL ideology, controversial, unreliable evidence subjected to FRYE or DAUBERT hearings in other states was excluded to ***protect the integrity of the legal system*** because RRM-MPD-DISSL ideology and practices have:

***- not been accepted by the relevant scientific community (see cited science below and see Amicus from dozens of world-leading science experts who opined “Decades of research and***

scientific debate have clarified over and over again, that the notion of traumatic events being somehow “repressed” and later accurately recovered is one of *the most pernicious bits of folklore ever to infect psychology and psychiatry.*”

-- *NOT been supported by methodologically competent science published in peer reviewed journals, and have...*

-- *NO known error rate – (and thus might have a potential error rate of 100% ).*

The results of properly conducted Frey and also Daubert-Kumho hearings on “memories” similar to some of those alleged by several of the PA vs Sandusky accusers *were apparently unknown to ALL of the legal professionals in this case. The hearings include:*

See, Hamanne, et al. v. Humenansky, Ramsey County Minnesota File No. C4-94-203, Judge Betrand Poritsky, June 30, 1994, Transcript page 83-84. “The Frye hearing has been concluded and we are still on the record... It’s my finding, first, that the theory a person can block out of awareness [repress or dissociate] a long stream of [traumatic] events and subsequently recall them accurately is not supported by experts in the field. And further that there is general agreement by experts that such [recovered memory] evidence is not reliable nor trustworthy. That’s the Frye standard. As to the Daubert standard, it is also my ruling that such [recovered memory] evidence is not reliable nor helpful to the jury.”

See, Carlson v. Humenansky (Ramsey County Minnesota Trial Court), Judge Betrand Poritsky (January, 1996). Judge Poritsky again found (as he had in Hamanne v. Humenansky) that repression and recovered memories were unreliable concepts, not accepted by the relevant scientific community, not helpful to a jury and thus inadmissible.

See, Engstrom v. Engstrom California App., 2nd App. Dist., Div 2, (CA 1997) “[Repressed memory] is not generally accepted as valid and reliable by a respectable majority of the pertinent scientific community...”

See, State of New Hampshire v. Hungerford and State of New Hampshire v. Morahan 698 A.2d 1244 (N.H. 1997) “The phenomenon of recovery of repressed memories has not yet reached the point where we may perceive these particular recovered memories as reliable.”

See, State of New Hampshire v. Walters 697 A.2d 916 (N.H. 1997) “[W]e conclude, as we did in Hungerford , that ” [t]he indicia of reliability present in the particular memories in [this] case[] do not rise to such a level that they overcome the divisive state of the scientific debate on the issue.”

See, Franklin v. Stevenson, 987 P.2d 22 (1999). Utah Supreme Court ruling. ”Stevenson objected to the reliability of both the [recovered repressed memory] recovery techniques and Franklin's own

testimony concerning the recovered memories, as well as to the experts' testimonies regarding both the theory of repressed memory and Franklin's memories in particular.... As we conclude below, the trial court erred in not finding the plaintiff's experts' testimonies [regarding "repressed memories"] inadmissible... On cross-examination in this case, Stevenson elicited concessions from both of Franklin's expert witnesses, Dr. Bessel van der Kolk, and Franklin's therapist, Dr. Laurie Hoover, regarding ***the lack of scientific foundation*** for the therapeutic techniques Dr. Hoover used with Franklin... Franklin's evidence clearly did not meet the initial foundational showing of reliability... Not only has this court held that ***unreliable techniques are inadmissible as evidence***... the necessary threshold reliability of these techniques was not established in the instant case."

See, State of Rhode Island v. Quattrocchi, C.A. No. P92-3759 (R.I. 1999) [on remand from the Rhode Island Supreme Court 681 A.2d 879 (R.I. 1999)] "The State has not met its burden of establishing that repressed recollection is reliable and admissible as scientific evidence." [ The testimony of the alleged victim — based on recovered "memories" of abuse — was excluded and the case was dismissed. ]

See, State of New Hampshire vs. Bourgelais, Docket No. 02-S-2834, Judge T. Nadeau, April 4, 2005. "the State's motion [to use repressed memory evidence at trial] is denied... the court determines, based on the law and the evidence, that ***the reliability of memory retrieval has not been sufficiently established...***"

See, Rivers v. Father Flanagan's Boys Town, Doc 1024, Case No. 743, Nebraska State Court Judge Sandra L. Dougherty, November 25, 2005. "In conclusion, the Court finds and concludes that Rivers ***has not met his burden of establishing that repressed and recovered memory is reliable and admissible as scientific evidence*** or that it is properly applied in this case. The Plaintiff's evidence lacks the scientific reliability and proper application necessary to admission under Rule 702 and Daubert/Schaferman. As a result, the Courts finds and concludes that the Defendants' Motion in Limine No. 1 (banning all testimony regarding repressed and recovered memories) shall be sustained." [ The testimony of the alleged victim — based on recovered "memories" of abuse — was excluded and the case was dismissed. ]

See, Texas vs. Harris. Associated Press, "Texas man suspected of raping older women claims he suffers from multiple personality disorder", Washington Post, National Desk Sept. 19, 2011; and see, "Expert witnesses disagree on validity of multiple personality disorder" by Sonny Long, Victoria Advocate Newspaper, September 20, 2011 Edna, Texas; and see, Platenberg, G. Jury sentences convicted rapist to life in prison. Victoria Texas Advocate, Sept. 30, 2011. The court excluded the testimony of the defense expert witness ( a psychiatrist ) who testified regarding the defendant's "multiple personalities", "dissociated memories", etc. The court found the testimony regarding Dissociative Identity Disorder

(DID) [ ... a variant of Repressed Recovered Memory -Multiple Personality Disorder ] ***was controversial, unreliable, and not accepted by the relevant scientific community.***

See, John Doe v. Archdiocese of St. Paul, Case No. 62-C9-06-003962, December 8, 2009, 2nd Judicial District, Judge Gregg E. Johnson after a detailed, complex hearing found, “***Plaintiff failed to meet his burden of proof under the Frye-Mack standard of showing that the concept of repressed and recovered memory is generally accepted in the relevant scientific community***” ...“Inclusion of the diagnosis of dissociative amnesia in the DSM-IV does not establish general acceptance of that diagnosis”... “Plaintiff failed to meet his burden of proof under the Frye-Mack standard of showing that the theory of repressed and recovered memory is reliable and trustworthy based on well-recognized scientific principles because of the significant methodological flaws in the studies presented by plaintiff in support of that theory and the lack of any test to show reliability. Defendant’s Motion to Exclude Expert Testimony under the Frye- Mack standard is hereby GRANTED.” This decision was affirmed by the Minnesota Supreme Court on July 25, 2012, John Doe v. Archdiocese of St. Paul, 817 N.W.2d 150 (Minn. 2012). [ The testimony of the alleged victim — based on recovered “memories” of abuse — was excluded and the case was dismissed. ]

See, Texas v. Hays, No. CR14-095, CR14-096, CR14-097 & CR14-190 (Bandera Co., Tex. Dist. Ct. July 27, 2015). “It is hereby ordered that the expert testimony of Lisa Watts relating to her opinions regarding Dissociative Identity Disorder (DID) [ Testimony on DID ... a variant of Repressed Recovered Memory-Multiple Personality Disorder was excluded as ***controversial, unreliable, and not accepted by the relevant scientific community.***] None of this information was apparently shared with the jury in PA v Sandusky.

**4B19. Basic Essential Science-History:** National continuing education courses have taught this essential science-history, the requirement of informed consent for psychotherapy, and the dangers of memory contamination by improper leading-repetitive interviews by investigators, therapists, and attorneys. How is it possible given the world-wide distribution of this knowledge via media,education, CLEs, and other means for apparently ALL of the lawyers, judges, therapists and investigators involved in PA v Sandusky to demonstrate ***unprecedented levels of ignorance of such basic science-history so essential to this case?*** Or, alternatively, is this a case of systemic corruption and sabotage in pursuit of local political and economic goals? (See analysis of these questions later in the report). In addition to the hundreds of national and international news media reports on the RRM-MPD-DIIS malpractice cases, licensing revocations, and Memory Wars in addition to the numerous published DAUBERT hearings results excluding “buried” and “blocked” memories surfacing following interviews with local science-uninformed therapists (e.g. Gillum, Macnab), or abusive repetitive Government interviews (as described

by Inv Leiter on April 21, 2011 recording) as were many of the alleged “memories” reported in the trial of this case,

See also, continuing education courses on the science memory-false memory, debunking “recovered repressed memories”, proper use of the Frye-Daubert-Kumho process as taught to many thousands of lawyers, therapists, physicians etc. (CLE, CPE, CME, etc). I personally taught many of these courses in multiple states to thousands of professionals and others did also in addition to Medical, Psychological and Legal symposia on these important issues --- all apparently ignored (or improperly suppressed) in the investigation and trial of the PA v Sandusky case.

International journals, books, and other publications discussing this essential component of the history of the mental health system, the science of psychology/psychiatry, and historic interactions between law and science issues --- were all *apparently ignored (or improperly suppressed and hidden )* in the investigation and trial of the PA v Sandusky case.

See e.g. Barden, R.C., Memory and Reliability: Developments and Controversial Issues. In *Witness Testimony in Sex Cases*, Eds. Pamela Radcliffe, Anthony-Heaton Armstrong, Gisli Gudjonsson, and David Wolchover, Consultant Editor: Sir Anthony Hooper, Oxford University Press, March 2016 with a foreword by The Right Honorable, The Lord John Thomas, Lord Chief Justice of England and Wales.

See, also, Grove, W. M. and Barden, R.C. (2000). ‘Protecting the integrity of the legal system: The Admissibility of Testimony from mental health experts under Daubert/Kumho analyses.’ *Psychology, Public Policy and Law*, 5(1), 234-242. Excerpts reprinted in AF, G. *Evidence*: University Casebook Series (2002), Foundation Press – West Group, New York, p. 688.

**4B20. Basic Essential Science-History: There is no credible, reliable research base to ascertain a guess as to what % of abuse allegations are false.** ALL police or mental health or other professionals who report some “guess” (usually a low % hunch with ZERO competent scientific basis and no peer-reviewed citations offered ) are simply guessing and it is *unethical to guess without letting everyone know it's just a guess*. The only actual, peer reviewed, published study of this issue I am currently aware of was done by Dr E. Kanin in Indiana. In PA v Sandusky, defense counsel failed to provide the jury with expert witness testimony on such key issues. For example, zero evidence was properly presented to the jury regarding the research of Prof Kanin documenting that when his cases were fully investigated until actually solved -- that 41% of all rape allegations were proven to be false (by confession of the false accusers) and that a key motivation in false rape claims was “revenge”. [ See, Kanin, E. “False Rape Allegations”, Archives of Sexual Behavior 23, no. 1 (1994). In my experience,

science uninformed therapists (e.g., Gillum, Macnab) are often quite unaware of the Kanin research and believe RRM-MPD-DISS misinformation claiming a “very low” rate of false allegations. Presenting such misinformation to patients or courts without stating “nobody really knows” is unethical, violates licensing and ethics rules, and is clearly misconduct that should be properly exposed and refuted by competent attorneys and opposing expert witnesses.

**4B21. Basic Essential Science-History: Defense Lawyer Negligence or Sabotage:** Why did the defense attorneys in this fail to provide the jury with competent expert witness testimony on Memory-False Memory RRM-MPD-DIS issues to help the jury understand the essential science-history issues so relevant to this case.

The jury in PA v Sandusky was not properly informed by a competent expert witness on Memory-False Memory- RRM-MPD-DISS that research on thousands of trauma patients studied in detail showed ***they remembered many kinds of abuse without “blocking” memories, without “burying memories” and without “dissociating memories”*** or having such memories “come back” later. (See Pope, et al. and other detailed research citations in this report).

The jury in PA v Sandusky was not properly informed by a competent expert witness that one of the key functions of the human brain is to *remember bad, terrifying, horrific, awful, abusive things so we can avoid them in the future*. The controversial, novel, unreliable RRM-MPD-DISS notion that trauma “blocks memories” or “buries memories” and that such “memories come back” in a **reliable** manner **is a pernicious myth according to the relevant scientific community**. See, dozens of research studies as cited in this report as well as the Amicus Statement of many of the world’s leading scientists in this area (See research summaries and Amicus citation in this report).

**4B22. Basic Essential Science-History: On this record, no competent expert witness testimony was provided to the jury on the memory-contaminating effects of multiple, leading-suggestive-coercive interviews-therapy by poorly trained and/or corrupt investigators (e.g. Leiter), civil attorneys (e.g. Shubin), and local therapists (e.g. Gillum, Macnab), etc.**

WERE MILLIONS of \$ FOR NEW “MEMORIES”? No proper, essential science-history evidence was properly presented to the jury in this case regarding the millions of dollars potentially offered to alleged victims by civil attorneys (Shubin, Andreozzi) and therapists (e.g. Gillum, Macnab).

(See, e.g., Newly Discovered Evidence of sting investigator AJ Dillon's investigative recordings as well as the Newly Discovered SS-Shubin Interview Transcript ).

On the April 21, 2011 recording of the BH interview, Inv. Leiter disclosed to Attorney Andreozzi the corrupt-abusive-improper nature of the Government's investigative interview process in this case including:

PLANNED MEMORY MANIPULATION -- the interviews were apparently carefully planned to be abusively coercive, leading, suggestive, and repetitive. (See, Inv Leiter's discussion of April 21, 2011 with transcript quotes in this report)

A HIGHLY IMPROPER, MEMORY CONTAMINATING INTERVIEW PROCESS. -- the Government interview process described by Leiter in the April 21, 2011 recording appear *carefully planned to deliberately and repetitively manipulate the memory reports of witnesses until they agreed with the Confirmation Bias Goals of Inv Leiter's pre-chosen narrative.* With a competent Expert Witness in Memory-False Memory, this extraordinary discussion of a corrupt interview system could have been the most important evidence in the trial but was instead not properly shared with the jury by the negligent and/or corrupt-sabotage efforts of defense counsel. (See, similar interviewing errors in the infamous McMartin, Wenatchee, Kelly Michaels cases as well as the many RRM-MPD-DISS malpractice litigation cases). (See, Police Investigator Leiter's inadvertently recorded discussion statement at the April 21, 2011 police interview of BH. )

RRM-MPD-DISS IDEOLOGY – WHO INDOCTRINATED THE WITNESSES? No proper evidence from a Memory Expert Witness was properly presented to the jury regarding one of the very ESSENTIAL issues in this trial – HOW, WHEN, WHY, and from WHOM did multiple alleged victims learn the terms, concepts, and ideas to become indoctrinated into the unreliable controversial RRM-MPD-DISS ideology and methods regarding “buried memories”, “blocked memories”, “dissociated memories” “memories stored in an inner child”, “memories from abuse at age 2” and other controversial, inherently unreliable notions? See, Ofshe, R. and Watters, E., *Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria*. 2nd Edition. University of California Press, 1996. [ This book explains in detail how and why patients and witnesses came to adopt new “memories” that re-wrote their auto-biographies].

**4B23. OPINION:** *In sum, on this record, basic, reliable, valid scientific-historical information essential for a competent-fair trial in such cases was never provided to the jury.* Was this the result of unprecedeted, Negligence of the lawyers and/or deliberate corruption and sabotage of the case for local political-economic reasons, and/or other motivations? (See detailed evidence and analysis of these investigative hypotheses later in this report).

In sum, on this record, the jury in PA v Sandusky was misled and uninformed regarding essential scientific-historical issues of memory, false memory, systemically-abusive-corrupt interviewing methods and other essential issues. Will these issues be properly investigated with public hearings and witnesses under oath?

**5. REVIEW and ANALYSIS OF THE NEWLY DISCOVERED ALLEGED VICTIM SS-ATTORNEY SHUBIN TRANSCRIPT and AJ DILLON TRANSCRIPT EVIDENCE – BOTH SHOWING IMPROPER, MEMORY CONTAMINATING, ABUSIVE MIS-INTERVIEWS.**

**5A. Analysis of the newly discovered transcript of a discussion between attorney Shubin and alleged victim SS.** In reviewing the newly discovered transcript of a Jan 15, 2018 interview of SS (reportedly since deceased) with his lawyer Andrew Shubin, JD, it is my opinion that this *interview transcript documents highly suggestive, unethical, improper, and abusively leading and memory contaminative interviewing methods by Attorney Shubin.* It is quite clear on this transcript (and I have reviewed hundreds of transcripts as a consultant or testifying expert witness for prosecutors and defense attorneys in dozens of states) that Attorney Shubin was ***not properly interviewing alleged victim SS*** but *improperly and unethically instructing the witness as to the facts Shubin wanted to hear from alleged victim SS.*

This review of the newly discovered transcript produces at least two Investigative Hypotheses. First, that Mr. Shubin was a negligent attorney who somehow was not aware of the decades of basic science-legal history demonstrating how such improperly leading interviews can manipulate-influence-change and transform the “memories” of witnesses thus tainting the integrity of the legal process. An alternative investigative hypothesis is that Mr. Shubin was engaged in an apparently improper and unethical attempt to manipulate and change alleged victim SS’s testimony to obtain payments of settlement money for himself and SS. (See, Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022; (See, Transcript of Shubin- alleged victim SS’s discussion and Affidavit from Attorney D. Litman ; See, Transcript of AJ Dillon Investigation and Affidavit from AJ Dillon).

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that other alleged victims in this case also apparently demonstrated ***radical changes in their “memory” reports following meetings/interviews/discussions/ with Attorney Shubin.***

***On the available record, these “memory changes” apparently made the victim’s “new memories” far more financially valuable in future lawsuits and settlements.***

On this record, discussions-interviews-therapy with Attorney Shubin and his affiliated psychotherapist Macnab were apparently involved prior to several alleged victim witnesses offering significant changes in their “memory” reports. These changes in memory reports were apparently in the direction of “new memories” of criminal abuse for which Shubin and the witness were likely to be paid enormous sums of money. (See, Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022).

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that the PA Office of the Attorney General was reportedly concerned about Attorney Shubin’s attempts to ***control the testimony of his clients***. See, Police Report “*One of the OAG attorneys had advised me that one of several problem areas with Shubin was his insistence that he be present for the interview of Alleged Victim AM*” [ Dr Barden notes: It is **very** unusual anywhere in the US for a civil litigator to be present in a police investigation interview with the litigator’s client, a potential crime victim and a future plaintiff of the civil litigator in a lawsuit for money damages. The serious potential memory-contaminating influences of the civil litigator’s presence in an interview are obvious. ]

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation reveals that that on May 7, 2011 — SS (currently deceased) according to a police report told Investigator Anthony Sassano on May 7, 2011 that he did NOT view any of Sandusky’s behavior around him as sexual in nature and never felt uncomfortable around him. Alleged victim SS reportedly told Office of the Attorney General Investigator Sassano “Sandusky is a great role model as he helps people in need.” See, Exhibit C, June 1, 2011, Pennsylvania Office of the Attorney General, Investigative Report of Anthony Sassano as noted in the Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022.

Following my initial review of the newly discovered Shubin-alleged victim SS transcript, my additional and ongoing investigation revealed that the Office of the Attorney General Investigator Sassano also reported on his June 1, 2011 interview with JSi , SS’s brother. ***On this record, unlike his brother, SS, the brother JSi was never interviewed by Attorney Shubin and was never in therapy with Shubin’s affiliate psychotherapist, C. Macnab.*** The police report documents JSi (who reportedly spent

far more time with the defendant than his brother JSi) denied any abuse by Sandusky and told Sassano “he had heard of the allegations against Sandusky in the news and does not believe they are true. He indicated that Sandusky is a very generous and most positive person who helps kids with problems. He indicated that to this day, he has occasional contact with Sandusky via phone and considers him a friend.” ( See, Exhibit C, Pennsylvania Office of the Attorney General, Investigative Report of Anthony Sassano, June 1, 2011. )

Investigator Sassano also reported on his May 9, 2021 interview with JSi (File No: 683-12-2914-1 ... [ Note: Again, JSi was never interviewed by attorney Shubin and was never in therapy with Shubin-affiliate Macnab and his reported “memories” did not change over time. ] Inv. Sassano noted, “He stated that after staying at Sandusky’s house many, many times he knows that Sandusky would have had ample opportunity to abuse him if he was so inclined to do so. He never once ever tried anything out of line with JSi. JSi stated that Sandusky is kind of a grandfatherly, huggy type of guy and genuinely tries to encourage kids with his enthusiasm. His hugging and caring for kids was never sexual at all. He said that he does not believe that these allegations are true and *feels that this might be some type of attempt by these kids to get money or their parents to get money from Penn State and Jerry Sandusky*. He has never heard anyone speak about Jerry Sandusky in a negative way. He (Sandusky) has always had a tremendous impact on a lot of kids ... He said he speaks with (another alleged victim) AM on Facebook and AM never mentioned anything about any incident involving Jerry Sandusky. He stated Jerry Sandusky was a positive influence in his life to say the least. Sandusky set JSi on his life course and JSi feels he would have never gotten into college and would never be in the position he is in today without Sandusky’s help. He said that Sandusky was extremely influential in his life.

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that alleged victim 2’s (AM’s) initial statements reportedly claimed he was “the boy in the shower” and that he reported suffering NO abuse at all from the defendant in this case. AM did not testify at trial as a witness in Sandusky’s defense, reportedly because Attorney Shubin actually hid AM in an undisclosed location. (See, AM’s statement to Investigator Everhart). Consistent with this analysis on Nov 9, 2011 alleged victim #2 (AM), reportedly told investigator Curtis Everhart, “never in my life did I ever feel uncomfortable or violated by Sandusky...never did Jerry do wrong by me... I will never have anything bad to say about Jerry”. In addition, in the Everhart interview the alleged victim AM reported gross misconduct by the investigators consistent with Inv. Leiter’s recorded statements of April 21, 2011 -- documenting a highly improper, systemic, abusive, memory-contaminative government system of Memory Manipulation interviewing (See detailed analysis below). AM reportedly told

Everhart, after telling PSP interviewers that Sandusky never mistreated or abused him in any way “I felt very uncomfortable with the PSP interview process as they would try to put words in my mouth, take my statements out of context. The PSP investigators were clearly very angry and upset when I would not say they wanted to hear.” (Exhibit D, Interview with Everhart in Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022).

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that both Investigator Sassano and Inspector Corricelli reportedly suspected the honesty of Attorney Andrew Shubin with regard to AM’s changed “memories”. Investigator Sassano reportedly claimed that Attorney Shubin made a false representation to him (serious unethical misconduct for an attorney) of alleged victim AM’s “memories” of abuse. In addition, investigator Sassano reportedly rejected AM’s written statement of “memories” as Inspector Correcelli indicated he suspected Attorney “Shubin wrote it”. See, Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022, Exhibit E, Supplemental Report of Sassano at pg 5-6.

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that, JS (Alleged Victim #3, on July 19, 2011 - in JS’s first interview with police – that is, prior to interviews-therapy with Shubin and/or Macnab), said “Sandusky never did anything inappropriate to him” and “I don’t believe any of this stuff is true and hope he is found not guilty.” See, Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022, at Exhibit F, JS Police Report.

Later, after six reported meetings with Attorney Shubin and “treatment” with affiliated therapist C. Macnab, JS’s “memory” reports apparently changed radically, and JS then first began to report “memories” of criminal acts of abuse. (N.T. Trial, Day 4 at 97, 99, 102-103). Mysteriously, after the allegations JS reportedly said he wanted to be adopted by Sandusky. (N.T. Trial, Day 4 at 109). See, Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022.

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that alleged victim JS was reportedly paid \$7.25 million for his “new memories” that emerged AFTER discussions with Attorney Shubin and AFTER “treatment” in therapy with Shubin-affiliated therapist C. Macnab. As per typical civil litigation practices, Attorney Shubin may well have

*received 40% of that amount, a profound financial incentive to help his clients “find new abuse memories”.* See, Exhibit G, affirmation by Ralph Ciprano regarding settlement amounts in Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022.]

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that DS (Alleged Victim 7) in 2004, reportedly sent an application for financial aid writing “Jerry Sandusky, has helped me to understand so much about myself. He is such a kind and caring gentleman, and I will never forget him.” (N.T. Trial, Day 3 at 138). Consistent with the evidence reported above, after multiple (10-15) reported meetings with Attorney Shubin and “therapy” with Shubin-affiliated therapist C. Macnab, DS’s reported “memories” were apparently radically transformed. After exposure to Shubin and Macnab DS stated that “through counseling different “memories” were “triggered” … “that doorway that was closed, has since been opening more… through counseling and different things I can remember a lot more detail that I had pushed aside then” (N.T. Trial, day 3 at 143 in Defendant’s Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022).

As discussed in detail further in this report, this kind of classic “recovered repressed memory” RRM testimony was ***not properly discussed by an expert witness*** on Memory-False Memory-RRM at the trial of this matter, ***no proper Daubert hearings*** were sought or conducted (although many have been held on identical issues in other states as discussed in this report), and ***the essential science-history of the RRM “Memory Wars” was never reported to the jury*** including licensing revocation prosecutions against RRM-MPD-DISS therapists. (See Gillum and Macnab’s publicly stated views and misconduct discussed below) . No history of the licensing revocations of therapists who engaged in such “therapy” was reported to the jury. No actual science debunking the notion that “different memories” that are “triggered” in therapy are ***reliable or accurate*** for real events or in any way suitable for admission in a court of law (See multiple Frye and also Daubert hearings in other states excluding such evidence). No essential charts documenting the number of interviews for each AV were produced for the jury. No essential charts were produced for the jury documenting how many of the interviews for each AV were not properly RECORDED nor who was present in the room and how many such interviews were NOT reported and not RECORDED. On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that as predicted by the Alt. Hypothesis of unethical (and/or potentially criminal)

manipulation of witnesses for financial gain, enormous financial payments were indeed made to Attorney Shubin and to several of his clients (and affiliated Therapist Macnab's patients) *after they reported radically new, changed “unblocked” RRM-MPD-DISS “memories” of criminal abuse.* Reportedly Attorney Shubin's clients and Macnab's patients included alleged victims 2, 3, 7, and 10. Payments (financial incentives for new “memories”) reportedly included :

AM - \$6.9 million

JS - \$7.25 million

DS - \$3.25 million

RR - \$5.5 million

FP - \$9 million

(See, Exhibit G, affirmation by Ralph Ciprano in Defendant's Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022. )

There is apparently zero corroborative evidence for the changed, transformed “memories” of abuse arising AFTER demonstrably improper, leading, interviews with Shubin and apparently RRM therapy with Macnab. (See, Newly Discovered Evidence of Shubin and Macnab interview methods.)

**OPINIONS:** In my opinion, the newly discovered transcripts of Attorney Shubin's interviewing methods document improper, manipulative, leading-suggestive questioning methods well-known to be capable of, and likely to, manipulate and change the “memories” of witnesses. In addition, in my opinion the Shubin SS and AJ Dillon and other evidence in the Defendant's Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022 further supports the Investigative Hypothesis of unethical and/or negligent practices by attorney Shubin with potential assistance from affiliated therapist Macnab that manipulated and changed the “memory reports” of alleged victims -- by improper leading and suggestive interviews and psychotherapy. Was this possibly for the purpose of obtaining millions of dollars in settlement funds – as announced via a public offer? This important investigative question/hypothesis should be properly investigated. On this record, the jury in PA vs Sandusky remained uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing issues.

**5B. Analysis of the newly discovered transcript in the investigation of A.J. Dillon.**

In reviewing the newly discovered transcript of the interview of attorney Shubin with “sting investigator” A.J. Dillon. In my opinion, his transcript provides further corroborative evidence supporting the investigative hypothesis that attorney Shubin and therapist Macnab were engaged in improper, manipulative, memory contaminating interviewing practices. On this transcript, attorney

Shubin strives to *manipulate and change the “facts” of Mr Dillion’s reported allegation “memories”*. Shubin’s conduct, on this newly discovered transcript, supports the investigative hypothesis that Shubin’s goal was to manipulate the “memories” of alleged victims to enhance their monetary value for civil litigation. This transcript and the other newly discovered transcript of Shubin with alleged victim SS contain evidence of unethical and potentially criminal misconduct and should be properly reported to The Office of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania.

Given this *prima facie* evidence of a corrupt process of producing-indoctrinating “new memories of abuse” in exchange for life-altering-enormous cash payments (for apparently unvetted, uninvestigated stories of abuse) -- the defense attorneys should have obtained all emails-correspondence-phone records between Shubin and therapist Macnab as well as all billing records and therapy records of Macnab for each AV “patient” to properly assess the potential memory-transforming-manipulating therapy methods used. Given the well-documented, FBI debunked, *thousands of cases of false memories of abuse implanted in the minds of gullible, vulnerable patients by science-uninformed and/or corrupt therapists* during the RRM-MPD-DISS debacle of the 1980s and 1990s, a key alternative defense hypothesis for presentation to the jury was this evidence supporting the investigative hypothesis that Shubin-Macnab were in business to create “brand new memories of abuse” for millions in cash.

As AJ Dillon reportedly said in a Podcast interview with journalist John Ziegler “I was shocked (that Shubin brazenly changed my story) and I am immediately thinking this entire thing (Sandusky investigation/trial) is BS. I came as a fake accuser (conducting a sting investigation), and he (Shubin) changed my story (to produce new and cash-valuable “memories of abuse”). *What makes me think he didn’t do this with everyone?*” (See, With the Benefit of Hindsight, Podcast, 4/21/2021). Dillon’s report and hypothesis appears consistent with the “changing memories” of other alleged victims represented by Attorney Shubin and in therapy with Macnab.

Several of Shubin’s clients reportedly previously told the OAG and state police investigators they were not abused by Sandusky but then gave different “memory” reports at trial after multiple interviews with attorney Shubin and/or after therapy with Shubin’s affiliated therapist C. Macnab. On this record, the “new memories of abuse” were likely to produce large cash payments in the millions of dollars with essentially “few questions asked”. (See, Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022). On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

The newly discovered transcripts of Attorney Shubin's interviews with alleged victim SS and AJ Dillon support the Investigative Hypothesis that Shubin (and his affiliated therapist Macnab) were either A) negligent of the science-history demonstrating the inherent unreliability of RRM-MPD-DISS notions as well as science showing that leading-suggestive interviews can improperly "change-manipulate memories" leading to substantial taint and defects in the integrity of the legal process and/or B) were engaged in an unethical and/or criminal scam to manipulate witnesses to produce "new memory claims of abuse" and thus obtain large settlement sums in civil litigation.

Both of these ongoing investigative hypotheses are supported by my continuing and ongoing investigation of this matter including reviews of evidence documenting a "Culture of Corruption" in the investigation and trial of this case including negligent and/or unethical, and/or deceitful and/or criminal misconduct by investigators, lawyers, and a judge (See, details below). My investigation of these hypotheses continues.

**Following this analysis of the newly discovered evidence in this matter, my ongoing investigation, opinions, and investigative hypotheses in this case are detailed below.**

**6. DR BARDEN's OPINIONS and INVESTIGATIVE HYPOTHESES REGARDING AN ONGOING EXPERT REVIEW OF THE PA v SANDUSKY CASE:**

Having reviewed much evidence in this case, I offer several opinions.

In my opinion, the investigation and trial of this case was the most tragically science-uninformed and science-misinformed case I have reviewed in the past 30 years.

In my opinion, the Government's investigative interview procedure as described by investigator Leiter in his recorded statements of April 21, 2011 document a highly improper, abusive, and likely memory contaminative interview scheme that violates any ethical protocol or principles developed by law enforcement and science. Inv. Leiter's recorded description documents one of the most improper, abusive, memory contaminating interview schemes I've reviewed in the past 30 years. Any witness interviewed by Inv. Leiter or using Leiter's methodology should have been challenged by the defense and subject to Expert Witness review and explanation at trial of the relevant-science-history of the kinds of memory contamination often seen from such defective interviewing methods.

— In my opinion, the newly discovered evidence including the transcript of attorney Shubin's interview of alleged victim SS, as well as the transcript/results of AJ Dillon's reported "sting investigation" document a very improper, very leading, very suggestive, and likely memory contaminative interview process used by Attorney Shubin, in which he improperly instructs, leads, and suggests facts to "coach the witness" in ways that clearly would enhance the financial settlement value of a client's new "memories". The science regarding such memory-contaminating interviewing was never properly presented to the jury in this case.. This is one of many examples of why the investigation and trial of this case was the most tragically science-uninformed and science-misinformed case I have reviewed in the past 30 years.

— It appears on this record that government investigative interviews were conducted that were not properly recorded (and others were apparently recorded but the recordings were never properly reviewed by the extraordinarily negligent defense counsel in this case). In my opinion, failures to properly **record** investigative interviews in such cases, should be viewed as powerful indicia of corruption and egregious misconduct and an attack on the integrity of the legal process. Without proper recordings of all interviews, it is impossible to rebut the alternative hypothesis that changes in a witnesses "memory" reports over time were due to improper interviewing. On the records reviewed, it is not clear how many interviews in this case were recorded and how many were not. Note that transcripts without accompanying recordings should also be viewed as indicia of corruption. I have caught multiple government transcripts in cases with recordings where transcripts had been mis-transcribed "in error" to assist the government's case. A jury must be able to see and hear the actual questions asked and the actual answers given to form any reliable opinion as to whether or not an interview was improperly leading and suggestive— after learning the relevant science from a competent Memory-False Memory expert witness. Missing recordings of interviews is one of many examples of why the investigation and trial of this case was the most tragically science-uninformed and science-misinformed I have reviewed in the past 30 years.

#### **Investigative Hypotheses, Questions for future Inquiry, and Relevant Evidence from the Record Reviewed.**

Given the limited evidence regarding a number of issues in this case, I am not able to provide expert opinions about a number of important investigative questions. For several questions and issues, I will generate and offer a number of investigative hypotheses to assist the court in **avoiding confirmation bias** and consider investigating important unanswered issues-questions in the future. In assessing aspects of

these investigative hypothesis, I will also attempt to document evidence on the record relevant to various questions and hypotheses. I hope this effort will assist the court in determining what further information and investigations might clarify what actually happened in this complex and troubled case -- and why.

The following information contains a summary of essential, foundational evidence as well as investigative hypotheses and questions regarding evidence of a reportedly secret, "off the record", unrecorded motel meeting (Hilton Garden Inn on December 12, 2011), apparently secretly collusive investigations (Fina and Freeh), as well as evidence reportedly documenting the unprecedented, troubled group of legal professionals involved in this case including (based on subsequent evidence) a law license-suspended lawyer (Fina) and a disbarred-prosecuted-imprisoned lawyer (Rominger) and two lawyers publicly reprimanded for manipulative misconduct lawyers (Fina, Baldwin) and a lawyer fired for pornography misconduct (Fina) and a memory-manipulating investigator (See, Inv. Leiter's recorded statements on April 21, 2011 describing an improper government interviewing scheme), and a collection of apparently science/history-uninformed lawyers (Fina, McGettigan, Amendola, Rominger, Kelley, , Cleland), and "secret meeting"-recused-fired-relieved of duty judges (Cleland, Feudale) involved in this historic, controversial, improperly conducted case.

The number and severity of misconduct charges, prosecutions, disbarments, firings, resignations, and recusals of the legal professionals involved in this troubled case is quite remarkable. In 30 years of reviewing cases I do not recall reviewing a case involving any attorney, judge or investigator who :

- reportedly was disbarred or prosecuted for crimes and imprisoned (Rominger),
- reportedly was suspended from the practice of law for manipulating and misleading a judge (Fina),
- reportedly was publicly reprimanded for misconduct/violation of legal ethics including failure to protect client privileged information (Baldwin),
- reportedly was proven to be mass transmitter of explicit, racist, violent pornography then resigned (Fina),
- reportedly was held a secret-off the record, "secret" meeting producing key processes for a trial including waiving defendant's essential rights with no documented discussion (Cleland),
- reportedly was hiding a secret off the record meeting for 4 years even hiding such a meeting from defense co-counsel (Cleland),
- reportedly was hiding a secret Motel meeting for 4 years even from his own co-counsel (Amendola)

-- reportedly was harming (or was negligent in harming) his client's trial in multiple, serious ways  
(Amendola)

-- engaged in the level of documented misconduct shown by several of the "professionals" involved at some point in this case.

To have so many of the most reprimanded, suspended, fired, prosecuted-imprisoned, recused, hiding secret meetings, investigators, lawyers, and judges I've seen in 30 years **all involved in this one defective case** is indicia of a troubled, improper legal process.

More specifically, how and why did so many serious and unusual errors occur in the PA vs Sandusky investigation and trial? Why does this case remain so controversial many years after the trial and conviction? A key role of an expert witness in such cases is to assist the court, lawyers, and/or parties to understand and apply reliable scientific, technical, ethical, and investigative information principles, and methodologies, ***while generating/testing alternative hypotheses***. These hypotheses will, I hope, assist the court in understanding what might have gone wrong in this controversial case.

#### **6A. KEY EVIDENCE, QUESTIONS, and ALTERNATIVE INVESTIGATIVE HYPOTHESES and OPINIONS IN PA v SANDUSKY.**

To avoid Confirmation Bias all investigators and experts (like all scientists and medical diagnosticians) should **generate and explore alternative investigative hypotheses**. This case leads to many complex and important alternative hypotheses – to the best of my knowledge, zero have been properly investigated thus far. To assist the court in efforts to protect the integrity of the legal system, and to guide potential future investigations, I offer a series of investigative hypotheses and related questions and related evidence from the record.

##### **Ongoing Investigation of Alternative Investigative Hypotheses in this case:**

**Which Investigative Hypothesis -- or combination -- is correct? Will public hearings explore these issues?**

1 – the defendant is guilty as charged and the many, well-documented, very serious errors in the investigation and trial of this case are irrelevant

2 – the defendant may be guilty or innocent but the many, well-documented, serious errors in the investigation and trial of this case as well as a science-uninformed media frenzy and collusive local political corruption deprived a citizen of PA of a fair and honestly conducted trial as well as misled an unsuspecting jury into rendering a false verdict.

3 -- the defendant may be guilty or innocent but the “changing uncorroborated abuse memories” of many or all of the “victims” were the product of investigators’, lawyers, and/or therapists improper mis-interviewing methods, improper-witness memory tampering, science-uninformed psychotherapists (Gillum, Macnab) who apparently indoctrinated patients-clients into gullibly believing some of the most controversial and dangerous pseudo-scientific, inherently-unreliable notions in the history of psychology and law.

4 -- the defendant may be guilty or innocent but the level of improper misconduct in this case is highly unusual, even historic, and includes :

-- investigators (reckless, highly improper, memory-contaminative interviewing methods as documented by Inv. Leiter in his April 21, 2011 recorded statements during the break in interviewing BH.),

-- Judge Cleland’s reportedly secret, off the record, Hilton Garden Motel meeting that produced a held a “sure conviction, impossibly rapid trial schedule”, a refusal to provide time for defense attorneys to even review basic evidence or retain a competent expert in Memory-False Memory Science, and continuing to hide the secret Motel meeting for 4 yrs, in collusion with Fina and Amendola.

-- legal professionals Cleland-Fina-Amendola entered into an agreement apparently to hide the secret Hilton Garden Motel meeting, quickly convict the defendant, and thus prevent \$500 million in damages to the local economy from the looming, threatened NCAA “death penalty” for Penn State football, this hypothesized agreement explains the very unusually long list of negligent failures to provide the jury with competent Science of Memory-False Memory Expert Witness testimony, no Frye hearings, no exposure of Shubin-Therapist mis-practices, no discussion of the relevant science-history, failure to fully expose the abusive, improper interviewing scheme of Inv. Letier as discussed in his recorded statements etc. and many other errors as listed in this report), and

-- politicians and allies (Corbett/Kelley/Fina desired to “get” and “remove” Corbett’s most persuasive and powerful political foes in his efforts to radically defund PSU with a 50% reduced budget. The most persuasive foes to Corbett’s plan to provide “half the previous budget” were PSU President Graham Spanier and Coach Joe Paterno – both were removed rapidly in the apparently pre-planned media frenzy resulting from this case. )

-- outsiders (the negligent Freeh Group Report investigators apparently failed to even record interviews (!) – a sign of Negligence or corruption, the Freeh Groups Report investigators apparently failed to disclose secret collusion with AG prosecutors including Fina when an “*independent*” investigation had been promised and paid for with \$8 MILLION dollars resulting in just “opinion”, the negligent Freeh Group Report investigators reportedly failed to even interview key witness some were not interviewed reportedly upon instructions from the FINA/AG office).

-- these and other errors produced *severe damage to the reputation, credibility, and integrity of the PA legal system*

5 -- the defendant is innocent, and the victim of one of the most improper, corrupt, falsely investigated and improperly, negligently tried cases in US history.

6 – other hypotheses as they become available.

**6A1. INVESTIGATIVE HYPOTHESES and RELATED QUESTIONS: ARE THERE MULTIPLE INDICIA of A “CULTURE OF CORRUPTION” in the PA LEGAL SYSTEM? IS THERE EVIDENCE OF SIMILAR TYPES OF CORRUPTION IN THE CASE of PA v SANDUSKY?**

*Quis custodiet ipsos custodes? Who judges the judges? Who polices the police?*

**On this Record, multiple indicia exist of a “Culture of Corruption” in the PA legal system. On this Record, evidence suggests similar types of corruption in the PA v. Sandusky case.**

**EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?*** Does the State of PA have a well-documented history of Corruption and Criminal Misconduct at the highest levels of the State Legal System? Were similar corrupt processes involved in PA v Sandusky?

**EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption? A SERIES OF KEY QUESTIONS:***

Why were there so many extraordinary errors and/or so much Negligence and/or so much corruption in PA v Sandusky? Does a well-documented, remarkable history of serious corruption-misconduct in the PA legal system -- help us understand, and even predict, several of the many egregious, highly suspicious “errors” and/or corrupt acts that tainted the PA v Sandusky investigation and trial?

**EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption? Improper Economic Influences? Did the looming NCAA “death penalty” economic damages improperly impact this case?***

On this record, it appears there were very real and serious concerns in the local jurisdiction in pre-trial 2011-2012 that the NCAA could invoke a “death penalty” sanction ending the Penn State football program for years thus predictably producing *economic damages of over \$100 million per year for five*

*years or more* to PSU and the local economy. Is it true that a rapid and sure conviction of the defendant in this case (as opposed to continuing the national media hysteria during a one-year proper preparation for a six week long, complex, multi-expert, FRYE hearing, controversial trial) could be viewed by some as the best way to avoid “the NCAA death penalty” and prevent a \$500 + million loss and devastation to the local economy.

### **EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

*Improper Political Influences? Did the ongoing, intense, high-stakes political battle between Corbett-Kelley-Fina vs. Spanier/Paterno/PSU improperly impact this case?* Did Corbett, Kelley, and Fina seek to destroy PSU President G. Spanier and Coach Joe Paterno and damage the reputation of the PSU football program for political gain? On this record, there is evidence that former PA AG then PA Gov. Corbett’s key legislative-political goal was to drastically slash funding for Penn State Univ. (Gov Corbett’s State budget reportedly sought a 50% cut in funding to PSU, reportedly a devastating reduction in Univ. funding that was reportedly unprecedented in the history of US higher education. Corbett’s goals were reportedly quite unpopular sending his popularity percentages from the 60s to the 30s. On the record reviewed, there is evidence that Corbett-Kelley-Fina were politically aligned and sought to reduce the influence of – or find a way to fire -- *the very popular and highly nationally regarded PSU President Spanier and the very popular and highly nationally regarded Football Coach Joe Paterno* including some reports of efforts to “get Spanier and Paterno” and somehow remove them to stop their persuasive voices in support of PSU. Reportedly, Corbett/Kelley had previously held multiple (2 or 3) Grand Juries to investigate the charitable work of J. Sandusky with hundreds of troubled youths – many in the “Second Mile Foundation” charity. Reportedly, the early, multiple Grand Juries and investigations of AG Corbett and his protégé replacement PA AG Kelley resulted in many (*perhaps dozens to hundreds*) of reports of non-abusive, effective charity work with zero criminal allegations of abuse thus the initial, multiple Grand Juries reportedly produced zero criminal charges filed.<sup>5</sup> The final (of 3 or 4?) Kelley/Fina Grand Juries did produce multiple witnesses with reportedly radically “newly changed, once-buried, once-blocked” memories of abuse and criminal charges and a controversial “presentment” (a public report of charges) with resulting controversies regarding questionable Grand Jury (GJ) testimony and accusations of Government corruption via GJ leaks, the misreporting of GJ evidence, and a (planned, pre-arranged?)

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<sup>5</sup> See, Snedden Federal Investigation Summary: “The 1998 (ZK) investigation was aggressively investigated by the Penn State police, also by Children and Youth Services, also by Centre County District Attorney’s Office then dismissed (insufficient evidence)... In regard to the 1998 investigation the police worked independently under the District Attorney – nobody at PSU managed the investigation at all” ( See, Snedden Federal Investigation at pg 21)

media frenzy that effectively smeared Corbett's opposition, Spanier and Paterno. The raging media scandal badly damaged PSU's reputation and resulted in Spanier's rapid resignation and Paterno's very controversial firing, and a controversial misdemeanor conviction for Spanier after years of PA court decisions that rejected all charges then reinstated charges followed by US federal court decisions rejecting (vacating) all charges then reinstating charges. In sum, how much of the PA vs Sandusky final (3<sup>rd</sup> or 4<sup>th</sup>??) grand jury process/media frenzy was driven by Corbett-Kelley-Fina political machinations to "get Spanier and Paterno" and damage PSU's political clout? Will the key witnesses be called to testify under oath in a proper investigation in a public forum on these issues? Will all Corbett-Kelley-Fina emails be properly obtained and reviewed to assess collusion on these issues, or have those emails already been destroyed?

Note that Spanier and Paterno were reportedly far more credible voices on multiple Higher Education/Sports Issues than Gov. Corbett and thus presented serious obstacles to Corbett's goal to drastically reduce funding to PSU and limit PSU's development and political clout. Spanier was also reportedly nationally very well-known and highly respected for his work in education as well as with law enforcement and national security issues. (See, J. Snedden Federal Investigation regarding G. Spanier's DOD, CIA, DOJ Security Clearances). For example, Spanier reportedly served as chair of the National Security Higher Education Advisory Board, a member of the National Counterintelligence Working Group, and as a member of the Board of Advisors of the Naval Postgraduate School and the Naval War College. Spanier had reportedly also received numerous recognitions for his contributions to national security, including being honored as one of the "Most Influential People in Security," the "Wings of Law" Award from the Respect for Law Alliance, the Director's Award for "Exceptional Public Service" presented by the FBI, and the Warren Medal for "Outstanding Contributions to the National Security of the United States of America." Spanier had also reportedly been a frequent speaker at FBI and other governmental and educational conferences and seminars on topics related to national security." The very detailed investigation by Federal Investigator John Snedden -- by far the best trained and most credible investigator involved in any way in this case -- cleared Spanier of any wrongdoing and noted that key Government witness Mike McQueary's multi-version-changing story of witnessing a violent shower attack but making no effort to stop it (even he was 6ft 5in and over 250 pds and a highly trained athlete) made "no sense" at all. (See, J. Snedden Federal Investigation regarding G. Spanier's DOD, CIA, DOJ Security Clearances). Also see, alleged victim AM's initial statement, McQueary's father, Dr Druvo, and Joe Paterno all apparently contradicted McQueary's changing, "no sense" testimony.<sup>6</sup>

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<sup>6</sup> **"Why didn't Federal Investigator J. Snedden buy McQueary's "rape in the showers" story?** Back in 2001, Snedden told a media outlet thats "Mike McQueary was a 26-year-old, 6-foot-5, 240-pound former college quarterback used to running away from 350-pound defensive linemen. If McQueary actually saw Jerry Sandusky

**6A2. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

*Why was an unprecedented (in my experience) Secret Motel Meeting reportedly arranged by Judge Cleland? Was this “secret meeting” to produce a collusive “likely conviction, impossibly rapid” trial schedule? One investigative hypothesis is that a “likely conviction, impossibly rapid” trial schedule in PA v Sandusky was the result of an apparently corrupt, secret, off the record, unrecorded, no court reporter invited, unprecedented, December 12, 2011 meeting of Judge Cleland, Prosecutors Fina-McGettigan, and Defense Counsel Amendola at a local Hilton Garden Motel? Why was the secret Motel meeting kept a secret even from Defense Co-counsel Rominger? (See, Rominger’s testimony at Aug 2016 hearing ; See Motion to recuse Judge Cleland after the secret meeting was discovered by defense appellate counsel.)*

Will this apparent evidence of corruption and these investigative hypotheses be properly explored in public hearings before PA Legislative Committees with witnesses under oath and/or by Federal Anti-Corruption investigators?

**6A3. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

*Why was the Secret “Off the Record” Hilton Motel Meeting kept a secret until 4 YEARS after the Trial and Conviction? -- Why was the reportedly secret, off the record, unrecorded, no court reporter invited, unprecedented, December 12, 2011, meeting of Judge Cleland, Prosecutors Fina-McGettigan, and Defense Counsel Amendola at a Hilton Garden Motel meeting kept a secret – reportedly even from Co-defense Attorney Rominger until 4 years after the trial and conviction when it was reportedly discovered by Appellate Counsel? Was this an ongoing improper agreement to rig-sabotage the trial and continue covering-up the secret meeting for years? Did this “agreement-to-sabotage the trial theory” help us understand why so many egregious and unusual, even “errors” were made by defense counsel in the PA v Sandusky trial including*

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raping a young boy in the shower, Snedden said, he probably would have done something about it.” “I think your moral compass would cause you to act and not just flee,” Snedden said. If McQueary really thought he was witnessing a sexual assault on a child, Snedden said, wouldn’t he have gotten between the victim and a “wet, defenseless naked 57-year-old guy in the shower?” Or, if McQueary decided he wasn’t going to physically intervene, Snedden said, instead of going home and doing nothing about a child rape in progress, why didn’t he call the cops from the Lasch Building? *As Snedden says, McQueary’s story simply makes no sense.* Reportedly, in Snedden’s view, it was also *egregious prosecutorial misconduct for the state attorney general’s office to fictionalize and sensationalize such a flimsy, decade-old story, and then hang an entire grand jury presentment on it.*”

-- no Memory-False Memory Expert was called by the “defense attorneys” ?  
-- no Interviewing Methodology Expert was called by the “defense attorneys” ?  
-- no member of the relevant scientific community expert on RRM-MPD-DIIS junk science and Frye hearings was called by the “defense attorneys” ?  
-- no expert on the malpractice, misconduct of therapists Gillum and Macnab was called by the “defense attorneys” ?  
-- the “defense attorneys” reportedly convinced the defendant not to testify in his own defense (near-certain suicide in such cases)?  
-- the “defense attorneys” failed to expose Judge Cleland’s improper “off the record, secret, unreported, unrecorded meeting at a local Motel” where crucial decisions were made including setting a “likely conviction, ,” trial schedule and also waiving the defendant’s essential right to a preliminary hearing?  
-- was this historic, unprecedented litany of extreme “errors” and the “secret unreported meeting” due to Negligence or to an actual improper agreement to manipulate “rig” and sabotage the trial and obstruct justice? (See, the PA Attorney General Kane’s conviction and the PA Judges “Kids for Cash” improper agreement case).

**6A4. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? If the SECRET MOTEL MEETING was proper, then why did Judge Cleland recuse from the case when his secret meeting was finally exposed?** Why did Judge Cleland recuse himself following public exposure (finally) by defense appellate lawyers of the secret, off the record, unrecorded, no court reporter invited, unprecedented, December 12, 2011, meeting of Judge Cleland, Prosecutors Fina-McGettigan, and Defense Counsel Amendola at a Hilton Garden Motel? Why did Amendola participate in the secret meeting and keep the meeting secret even from his own co-counsel Rominger? (See Motion to Recuse Judge Cleland and Aug 2016 testimony of Rominger in Appellate hearing).

**6A5. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? Are Secret, “Off the Record” Meetings to Decide Essential Trial Issues Standard in PA or was Judge Cleland’s Dec 15, 2011 Secret Motel “off the record” “no court reporter” and “not even disclosed to Defense co-counsel” Meeting actually Evidence of Corruption in this Case?**

Did the secret, unreported, unrecorded Motel Meeting produce key decisions that sabotaged the trial of this case? For example, why did Judge Cleland set an impossibly rapid (a “likely conviction,

impossibly rapid") trial schedule at the "secret Motel meeting"? Why did Defense Attorney Amendola waive the defendant's essential right to a preliminary hearing (where alleged victims could have been questioned about mental health issues, the number and type of interviews issues, memory-contaminating psychotherapy issues, RRM-MPD-DISSL ideology indoctrination issues, and many others) – at the secret Motel meeting? Are these kinds of "secret, unreported, unrecorded" Motel meetings (unprecedented in my 30+ year experience of reviewing cases throughout the US) a standard part of a deeply troubled PA legal system or is the secret meeting in this case evidence of improper, unusual, misconduct in PA? Is PA vs Sandusky the ONLY case in PA where a "likely conviction impossibly rapid" trial schedule, and a waiver of the defendant's essential right to preliminary hearing, were produced in a secret, off the record, unrecorded, no court reporter invited, meeting of Judge, Prosecutors, and Defense Counsel at a local motel --- or is this a standard feature of the PA legal system?

**6A6. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?*** Did defense attorney Amendola, Judge Cleland, and Prosecutor Fina enter into a corrupt improper agreement at the December 15, 2011 Secret Hilton Garden Motel Meeting to actively sabotage the defendant's case to prevent \$500 million dollars in damages to the local economy from an expected, looming, threatened NCAA "death penalty" for the lucrative PSU football program? (... and to further the anti-PSU political goals of PA Gov Corbett and his protégé PA AG Kelley?).

**Do these investigative hypotheses clearly explain and predict WHY defense attorneys Amendola and Rominger produced an historically defective "defense" at trial including why they:**

-- Failed to file a FRYE motion for a hearing to exclude the *inherently unreliable "recovered repressed memories"* of multiple alleged victims in this case? Would any witnesses have remained?

-- Failed to call a Memory-False Memory-RRM-MPD-DISSL expert in SCIENCE witness – a member of the relevant scientific community -- to explain the odd, non-normal "memories" of alleged victims and how *the relevant scientific community has rejected the RRM-MPD-DISSL ideology*, methods and results?

-- Failed to call an Investigation Methods expert to expose the Government's corrupt, abusive, repetitive interviewing procedure that was disclosed by Inv Leiter in his April 21, 2011 recorded discussion on a break when interviewing BH.

-- Failed to publicly expose the December 15, 2011, apparently corrupt, secret, unreported, unrecorded Motel meeting with Cleland, Fina, and Amendola at the Hilton Garden Inn. Is this why Amendola reportedly hid the "secret meeting" for over 4 years from his own defense co-counsel Attorney Rominger?

-- Failed to require a preliminary hearing where alleged victims could have been properly questioned about mental health issues, the number and type of interviews issues, memory-contaminating psychotherapy issues, RRM-MPD-DISS ideology indoctrination issues, and many other key evidence issues. The results of a proper preliminary hearing would have produced the predicate for a FRYE hearing that may well have excluded many or even all of the alleged victim witnesses. Attorney Amendola reportedly mysteriously waived his client's essential right to a preliminary hearing at the "secret, unreported, unrecorded" Hilton Garden Motel meeting of December 15, 2011.

-- Failed to demand and acquire a complete list of *all interviews conducted* in the investigation of the two (or three?) *previous Grand Juries that reportedly produced zero criminal charges*. How many (dozens? hundreds?) of interviews were conducted where witnesses extolled the charity work of the defendant and denied any abuse of any kind at any time.?

-- Failed to demand and acquire a *complete set of all psychotherapy records* for any witness that changed "memory reports" following psychotherapy – especially with reportedly RRM-MPD-DISS science-uninformed RRM "believers" like Gillum and Macnab. This is essential because *ANY unrecorded psychotherapy session in a witness' history* makes it quite impossible for the prosecution to meet the required burden of proving "beyond a reasonable doubt" that improper psychotherapy did not produce the "changed", potentially false memories of abuse in that witness.

-- Failed to properly have an Expert Witness explain to the jury the apparent *ethical and licensing violations of therapists Gillum and Macnab* including Gillum's dual-conflicting role boundary violations of attending a police investigation interview and spending "a full week" with a patient helping change that witness' memory reports and both Gillum's and Macnab's apparent failures to obtain proper informed consent for their therapy methods specifically failing to inform patients of the controversial (debunked) nature of their RRM-MPD-DISS beliefs and practices and the known risks of the induction of false memories. Macnab's financial arrangements with Shubin should also be properly explored – are they jointly running a business to generate unvetted, uncorroborated "new memories" of abuse in exchange for millions of dollars in settlements?

-- Failed to properly have an Expert Witness explain to the jury the history of thousands of examples of *therapist induced false memories* from the "Memory Wars" malpractice litigation as well as the hundreds of therapist-induced false memories of abuse debunked by Special Agent Lanning's FBI Task Force.

-- Failed to demand and acquire a complete list of *all unrecorded interviews*. Also failed to have a national Memory-False Memory expert witness explain to the jury that because abusive, leading, suggestive, repetitive, mis-interviewing (See, Inv. Leiter's April 21, 2011 taped confession of such

interviews) can easily change “memories” and produce false “memories” of abuse. ANY unrecorded interview in a witness’ history makes it quite impossible for the prosecution to meet the required burden of proving “beyond a reasonable doubt” that improper interviewing did not produce the “changed”, potentially false memory of abuse in that witness. This is why, the best of my knowledge and experience, ALL jurisdictions in the US now record ALL interviews in such cases – except for the apparently deeply improper investigation in this case. (See, Inv. Leiter’s April 21, 2011 taped confession).

**NEGLIGENCE or CORRUPTION?** : Is this historic – unprecedented in my experience – list of extreme failures of the defense counsel due to historic levels of Negligence or it is more likely they participated in a joint effort to obtain a rapid and sure conviction of a retired PSU coach to save the local economy from the expected \$500 million in economic damages from the looming NCAA “death penalty”? Either way, it seems clear on this record that the trial was a debacle of historic proportions. On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

**6A7. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Negligence or Corrupt Sabotage? Why was there No Defense Memory-False Memory-RRM-MPD-DISS Expert Witness at trial?** Why did the defense lawyers in this case FAIL to retain, prepare, and bring to trial a competent Memory-False Memory Expert Witness to debunk and explain the inherently unreliable “recovered repressed memories”, “buried memories”, “blocked memories” and “dissociated memories” testimony of multiple alleged victims in this case?

**6A8. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? – Why was No Defense Expert in Investigation Methodology provided by the Defense Lawyers to expose the grossly improper, abusive, interviewing misconduct of the Government in this case?** Why did the defense lawyers FAIL to retain, prepare, and bring to trial a competent Investigation Methodology Expert to expose and debunk, the extraordinarily improper, abusive, repetitive, memory-contaminative interview methods of the Government as disclosed by Investigator Leiter in his April 21, 2011 recorded discussion during a break in the BH interview?

**6A9. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? Why were Inv. Leiter’s Corrupt Interview Methods not properly exposed to the jury and the FOUNATIONAL SCIENCE of memory contamination not properly explained to the jury by a competent Memory-False Memory-Interview Methodology expert witness?** Why didn’t Investigator Leiter’s April 21, 2011 recorded discussion of an abusive, manipulative,

*repetitive, highly improper PA Government interviewing methodology* (essentially coercive witness memory tampering until the witness changed stories to agree with Leiter's pre-conceived ideas) result in Leiter being fired, or removed from the case for re-training, and the contaminated witnesses being excluded at trial?

**6A10. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? Did the defense attorneys let civil Attorney Shubin get away with Witness Tampering?** Did Attorney Shubin actually hide witness AM (Shubin's civil litigation client) to prevent AM from testifying that he was the "shower boy" reported by Mike McQueary and that actually no abuse at all took place as per AM's previous witness statement -- thus destroying the credibility of the uncorroborated, "multi-changing memories" of Mike McQueary whose story was used by Corbett allies Kelley-Fina to attack Paterno, Spanier, Curley, Shultz, and PSU? Will this issue be investigated in public hearings?

**6A11. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? Did Freeh Group and Prosecutor Fina defraud the public by secretly colluding on their claimed-to-be "Independent" investigations?**

Did Prosecutor Fina and the Freeh Group defraud the public and PSU (who reportedly paid the Freeh Group over \$8 MILLION dollars for a defective, science-uninformed report) by lying about and secretly colluding together on investigations they both promised would be "independent"? The Freeh investigation team's co-leader, Kathleen McChesney, reportedly created a diary that summarized her daily briefings and other highlights from the Freeh investigation, *including multiple, secret, collusive contacts with other agencies including FINA and other AG staff*. On November 4, 2019, appellate counsel (Attorney Lindsay) for the Defendant reportedly received a copy of a document purporting to be a diary maintained by Ms. McChesney regarding events occurring during the Freeh investigation. In addition, in February of 2020 appellate counsel reportedly obtained copies of summaries of emails among, and including Freeh Group members showing secret, unreported collusion in the supposedly "independent" investigation. (See, multiple examples of diary entries in relevant Defense Motions).

**6A12. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption? Why did the Freeh Group make so many fatal, "rookie", science-uninformed errors in their \$8 MILLION investigation/report that was (negligently) relied upon by the apparently science-uninformed NCAA to fine PSU tens of millions of dollars and relied upon by the apparently science-uninformed PSU BD members to "adopt" the error-ridden report and thus "accept"**

*tens of millions of dollars of NCAA sanctions based on Freeh Groups speculative, uncorroborated opinions?*

-- Did the FREEH GROUP really *fail to properly RECORD* all investigative interviews. Did they in fact, record NO interviews –if so, a staggering failure and key indicator of a corrupt investigation?

-- Did the FREEH Group really *fail to interview essential witnesses* in this case – especially “the multi-changing memories, most controversial witness” Mike McQueary?

-- Was the FREEH GROUP really *collusively instructed by Prosecutor FINA or other AG staff* to *NOT interview key witnesses* including “the multi-changing memories, most essential” witness Mike McQueary?

-- Did the FREEH GROUP really *fail to notice and report the essential Secret Meeting* at the Hilton Garden Inn Motel that waived the defendant’s right to a preliminary hearing and set the trial on a “impossibly rapid” rapid schedule to conviction?

-- Did the FREEH GROUP really *fail to notice and report the inherently unreliable “recovered repressed” RRM-MPD-DISS ideology-tainted memories* of multiple alleged victims in this case several AFTER unrecorded interviews with Shubin and his reportedly RRM-MPD-DISS therapist ally Macnab?

-- Did the FREEH GROUP really fail to notice and report that the negligent or improperly sabotaging defense lawyers *failed to file a motion requesting a FRYE hearing* to exclude inherently unreliable non-normal “memory” RRM-MPD-DISS “memory” reports. Such tainted “memory” reports have been excluded following Frye and Daubert hearings in multiple other states *under both FRYE and DAUBERT analyses?*

-- Did the FREEH GROUP really fail to notice and report the defense lawyers’ *failure to provide a Memory-False Memory-RRM-MPD-DISS expert witness thus* leaving the jury misled and misinformed in the PA v Sandusky case?

-- Did the FREEH GROUP really *fail to notice and report Investigator Leiter’s April 21, 2011 recorded discussion* during a break in the BH interview in which Leiter reports in detail *the Government’s abusive, highly improper, repetitive, often unrecorded, leading-suggestive, manipulative interviewing methods?*

-- Did the FREEH GROUP really *fail to notice and report the rather obvious Alternative Hypothesis in this case of improper influences by Economic Forces* (i.e., the looming \$500 MILLION in damages to the local economy from an NCAA “death penalty” ending the Penn State Football program).

-- Did the FREEH GROUP really *fail to notice and report the Alternative Hypothesis in this case of improper influences by Political Forces* including Corbett’s attempt to slash 50% of the PSU budget, effectively opposed by the nationally admired Pres Spanier and Coach Paterno and reported efforts by

Corbett-Kelley-Fina to “get” or “remove” Spanier and Paterno to facilitate Corbett’s reportedly unpopular political goals.

- Did the FREEH GROUP really claim as a defense to a defamation lawsuit filed by G. Spanier, that the Freeh Group report contained the *reporting of “no facts” but “just opinions”?*
- Did the FREEH GROUP really produce a *science-uninformed report by FAILING to retain and listen to a competent SCIENCE expert and member of the “relevant scientific community”?*
- Was the gullible “adoption” and payment of over \$8 MILLION for a fatally flawed, amateurish, science-uninformed Freeh Report more evidence that local *Economic Forces* (the fear of \$500 million in economic damages over years from an NCAA “death penalty” sanction) and *Political Forces* (Corbett-Kelly-Fina’s drive to smear and remove Spanier and Paterno for political gain) improperly influenced this process at multiple stages?

**6A13. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

Did the PSU BD actually pay out millions of dollars for changing-morphing “memories” of “abuse” from “victims” with zero corroborative evidence and a documented history of abusive, unrecorded, mis-interviewing by Government investigators and a history of RRM-MPD-DISS ideology memory contamination and a history of exposure to “interviews” from a civil attorney seeking millions of dollars for “newly-changed abuse memories” and a history of exposure to apparently poorly trained RRM-believing, science-uninformed local psychotherapists (e.g., Gillum, Macnab). Were Millions of dollars in payments made to multiple alleged “victims” with virtually no vetting, nor investigation, and no competent science-informed expert (a scientist-clinician with relevant peer reviewed, published science articles) evaluating such cases? Were these payments issued to cover up the multiple, serious errors, and/or corruption and/or secret Motel meetings, etc. that tainted the investigation and trial in the first place? Are these payments with no vetting and no competent investigation continuing today? If the conviction in this case is overturned for massive errors, gross negligence, and/or corruption and a “not guilty” verdict is rendered in a properly conducted trial, will the millions in payments be recovered from alleged “victims” with no corroborative evidence and a history of memory contaminative experiences with abusively leading-suggestive-repetitive Government investigators, lawyers with financial incentives, and therapists with RRM pseudo-science beliefs?

**6B. FOUNDATIONAL EVIDENCE ESSENTIAL TO THE ANALYSIS OF ALTERNATIVE HYPOTHESES IN THIS CASE:**

**6B1. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Indicia of Corruption:** Former Pennsylvania Attorney General Kane reportedly was sentenced to prison for committing multiple felonies involving manipulation of the legal system for political gain. (*Did something quite like this also happen in PA v Sandusky?*) ...

Reportedly -- NATIONAL RANKINGS – The Pennsylvania AG was rated the worst in the nation. See, “In August 2015 the U.S. Comprehensive Enterprise Institute, in its evaluation of state attorneys general, rated Pennsylvania AG Kathleen Kane as the worst of all fifty in the country, citing a long list of abuses.”

**Was AG Kane prosecuted as “payback” for exposing corruption in the PA legal system?** A lingering question is how much of PA AG Kane’s downfall was payback from the “system” for her exposing so much PA legal system corruption that had taken place over so many years when the PA Attorney General’s office was controlled by *former PA’s Corbett and Kelly* as well as corruption at the highest levels of the Judiciary of PA including several members of the PA Supreme Court?

**Indicia of PA Legal System Corruption:** Reportedly -- PA ATTORNEY GENERAL *sentenced to prison*: -- A PA Attorney General was reportedly *sentenced to prison* (Kane) : — a PA Attorney General (Kane) was reportedly *disbarred, prosecuted, and imprisoned* for crimes of manipulation/deceit including perjury/obstruction of justice.

**Indicia of PA Legal System Corruption:** The Pennsylvania Attorney General, Kathleen Kane, JD, *reportedly committed perjury/obstruction, was disbarred, sentenced, and served time in prison...* This history documents actual criminal corruption at the highest levels of the PA legal system – including deceit, manipulation, and manipulation of the legal process by a PA Government Official at the very highest levels of the Pennsylvania Prosecution-Investigation Legal System. (Did this type of corruption also occur in the PA v Sandusky case?).

See, Former PA Attorney General Kathleen Kane gets prison term ... A judge sentenced former Pennsylvania Attorney General Kathleen Kane on Monday to 10 to 23 months in prison for committing **multiple felonies** stemming from a politically motivated act of retribution. Kane, who resigned after her conviction of perjury and obstruction in August, also will be on probation for eight years following her release, according to Kim Bathgate, spokeswoman for the Office of Pennsylvania Courts. Kane, a Democrat who was elected in 2012,

*faced a possible 12-24 years in prison*, according to Kate Delano, a spokeswoman for the Montgomery County District Attorney's Office. ... The charges had alleged that Kane acted in anger about a local newspaper article that accused her of dropping an investigation into politicians accepting bribes. To get back at her predecessors, the complaint said Kane (deceitfully, manipulatively) leaked sealed, confidential grand jury documents to the media and then lied under oath about her manipulative crimes.

<https://www.cnn.com/2016/10/24/politics/pennsylvania-attorney-general-sentencing/index.html>

**DO INDICIA OF HIGH LEVEL CORRUPTION SUPPORT  
ONGOING INVESTIGATIVE HYPOTHESES REGARDING  
CORRUPTION IN PA vs SANDUSKY? :**

This example of egregious, brazen corruption in the Office of the PA State Attorney General— reportedly involving deceit and manipulation of evidence and judges as well as perjury -- are unprecedented in my 30+ year experience reviewing cases in many states. We should note that criminals often commit many crimes before being caught. How much corruption in this system remains undisclosed?

This history of well-documented improper activity *involves high ranking PA Government officials*

*A) creating criminal plans to  
B) manipulate evidence,  
C) deceive judges, and  
D) lie to hide criminal plans, conspiracies, and practices. Such demonstrated misconduct supports **investigative hypotheses** of similar corruption occurring in the investigation and trial of PA v Sandusky. (See, detailed evidence supporting hypotheses of corruption below).*

**6B2. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

**Additional Indicia of Corruption: Two PA Supreme Court Justices Were Reportedly Involved in Gross Misconduct and Resigned in Disgrace. (Was judicial misconduct also involved in PA v Sandusky?)**

Reportedly -- TWO PA SUPREME COURT JUSTICES REPORTEDLY RESIGNED IN DISGRACE AND PA AG's PROSECUTORS WERE REPORTEDLY ALSO INVOLVED IN JOINT, MASSIVE, CORRUPT PORNOGRAPHY TRANSMISSIONS (thousands of reportedly racist, sexist, violent, explicit, messages) ON GOVERNMENT EMAIL ACCOUNTS. WAS ADDITIONAL EVIDENCE of CORRUPTION ORDERED DESTROYED? Two PA Supreme Court Justices reportedly resigned for sending and receiving massive batches (1,000s of images) of grotesque-depraved-explicit-violent-racist pornography transmissions to and from PA Attorney General (**Corbett and Kelley**) Staff prosecutors and also to the Governor's (**Corbett's**) Staff.

**Reportedly** -- Additional Indicia of Historic Systemic Corruption in the PA Legal System: Reportedly, documented Thousands of *Explicit, Racist-Violent-Sexist-Explicit Pornography Transmitted by PA Supreme Court Justices to and from PA Attorney General's Staff and also PA Gov. Corbett's staff and also AG Prosecutor Frank Fina from the Sandusky case.*

**Reportedly** -- Pornography Cases against PA Supreme Court Justices and OAG Prosecutors: See, Pa. Supreme Court suspends justice over porn emails ... Pennsylvania's Supreme Court has suspended one of its justices, Democrat Seamus McCaffery, over the revelation that *he received and sent pornographic emails to friends.* ... The episode also highlighted a long-running feud between Justice McCaffery and Chief Justice Ron Castille, a Republican, who issued a separate statement saying his colleague (McCaffery) exhibits "pathological symptoms" of a "sociopath." ... Chief Justice Castille wrote that a "prominent medical journal" defined a sociopath as someone "not caring about others, thinking he or she can do whatever is in that person's own self-interest and having little or no sympathy for others." ....The order suspending Justice McCaffery said he exchanged "hundreds of sexually explicit emails" with staff of the PA Attorney General's office and that he "importuned" (threatened) associate PA Supreme Court Justice J. Michael Eakin to get Justice Castille to stop pursuing a probe of the matter, or else he'd leak embarrassing emails about Justice Eakin to the media (Blackmail? Improper agreement? Witness tampering?) .... The state's "porn wars" have also become an issue in the governor's race, with *two top aides to Gov. Tom Corbett resigning after it was revealed they traded explicit, violent, racist pornographic emails while they worked for Mr. Corbett during his time as attorney general several years ago....* Justice Eakin filed a complaint with the state's Judicial Conduct Board on Friday after the Philadelphia Daily News reported that he had received sexually explicit and racist emails ... He told the board that Justice McCaffery had called him last week before

the emails were leaked to say *he “was not going down alone,”* the paper reported (*Blackmail? Improper agreement? Witness tampering?*). ... Justice Castille’s statement on Monday said “that sort of threat borders on criminal conduct.”.... The order suspending Justice McCaffery said that Justice Castille found *some of the material in Justice McCaffery’s emails “extremely disturbing.”* He described one “depicting a naked 100-year-old woman as the target of a sexually explicit joke and a video of a woman in sexual congress with a snake.” ... Justice McCaffery last week apologized for a “lapse in judgment” about the emails... “ See,

<https://m.washingtontimes.com/news/2014/oct/21/pa-supreme-court-suspends-justice-over-porn-emails/>

**Reportedly** -- And see also, *Pennsylvania Supreme Court justice in (violent, racist, sexist, explicit) porn email scandal retires*, “The decision followed a disclosure that McCaffery had sent or received 234 emails with sexually explicit content or pornography from late 2008 to May 2012 and an accusation by a fellow justice that McCaffery had tried to coerce him into taking his side against Chief Justice Ronald D. Castille.”...” The suspension order brought up allegations that McCaffery had tried to exert influence over a Philadelphia judicial assignment and about a traffic citation received by his lawyer-wife, plus referral fees the wife collected from law firms while working in his chambers. ... “The inappropriate emails surfaced during an internal review by the attorney general’s office into how it had handled the Jerry Sandusky child molestation case. *Three senior officials in Governor Corbett’s administration and a county prosecutor who all formerly worked under Gov. Corbett in the attorney general’s office have resigned their government jobs as a result.*”

<https://www.nydailynews.com/news/politics/pennsylvania-justice-porn-email-scandal-retires-article-1.1988800>

#### **6B3. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

**Additional Indicia of Corruption? :** “Kids for Cash” -- the Ultimate Judicial Corruption. **Reportedly -- 2 PA Judges engaged in a truly depraved improper agreement to obstruct justice and sabotage over 4,000 cases, depriving children and families of Constitutional Rights, in order to receive \$2.8 million dollars in criminal kick back payments. (Was an improper agreement to obstruct justice and “sabotage just one trial” involved in PA vs Sandusky?)**

**Reportedly – The “Kids-For-Cash” Improper agreement Involved “Two PA judges who were reportedly sentenced to prison for an improper agreement to**

- A) shut down the county jail and**
- B) assist in building a “for profit” jail in collusion with criminal business owners then**
- C) the owners would bill the PA Government for private jail services and**
- D) the judges would falsely imprison innocent youth in the for-profit jail (some reportedly as young as 8yrs old! ) then**
- E) the improper agreement business owners would receive profitable Government payments to run the private, for-profit jail and**
- F) the improper agreement judges received reportedly some \$2.8 million in illegal kickback payments from the private jail company owners.”**

See, 2 PA judges pled guilty to improperly, illegally, deceitfully, and manipulatively sentencing hundreds of youth to a for-profit detention facility (jail) in exchange for illegal-criminal kick-backs of over \$2 Million dollars. Both were sentenced to decades in prison for this improper agreement to manipulate trials and hearings, defraud the public, and destroy the legal rights of citizens of Pennsylvania. [ Is this what happened in Pa v Sandusky to obtain rapid-sure conviction and prevent the anticipated \$500+ million in local economic damages expected from the threatened, looming NCAA “death penalty” for PSU football program? Did Cleland-Fina-Amendola and allies sell-out – at the secret “off the record” meeting at the Hilton Garden Motel and agree to sabotage the trial of one retired PSU coach to save the local economy? How else can we explain the unprecedented list of historic failures in the investigation and trial of this matter?  
]

And also see, “Two Pennsylvania judges were ordered to pay *\$200m in damages to kids-for-cash scandal victims* “Judges Mark Ciavarella and Michael Conahan accepted *\$2.8m in illegal bribe payments* to send children were sent to for-profit jails. Two **Pennsylvania** judges who orchestrated a scheme to send children to for-profit jails in exchange for kickbacks were ordered to pay more than \$200m to hundreds who fell victim to their crimes.

US district judge Christopher Conner awarded \$106m in compensatory damages and \$100m in punitive damages to nearly 300 people in a long-running civil suit against the judges, writing the plaintiffs are “the tragic human casualties of a scandal of epic proportions”.

In what came to be known as the kids-for-cash scandal, Judge Mark Ciavarella and another Judge, Michael Conahan, (entered into an improper agreement to) shut down a county-run juvenile detention center and accepted \$2.8m in illegal payments from the builder and co-owner of two for-profit lockups.

Ciavarella, who presided over juvenile court, pushed a zero-tolerance policy that *likely large numbers of children would be sent* to PA Child Care and its sister facility, Western PA Child Care.

*Ciavarella ordered children as young as eight to detention (jail), many of them first-time offenders convicted of petty theft and other minor crimes. The judge often ordered youths he had found legally delinquent to be immediately shackled, handcuffed and taken away without giving them a chance to say goodbye to their families.*

“Ciavarella and Conahan abandoned their oath and breached the public trust,” Conner wrote on Tuesday in his explanation of the judgment. Their cruel and despicable actions victimized a vulnerable population of young people, many of whom were suffering from emotional issues and mental health concerns. The Pennsylvania state supreme court overturned and threw out some 4,000 juvenile convictions after the scheme was uncovered. Former PA Judge Ciavarella is *serving a 28-year prison sentence*. Conahan, who was *sentenced to more than 17 years in prison*, was released to home confinement in 2020, with six years left on his sentence, because of the coronavirus pandemic.

<https://www.theguardian.com/us-news/2022/aug/17/pennsylvania-judges-kids-for-cash-damages-ciavarella-conahan>

AND

“*The Kids-for-Cash improper agreement scandal* also included Robert Powell, Robert Mericle, Mericle Construction, Pinacle Group of Jupiter LCC, Beverage Marketing of PA, and Vision Holdings. Judge Conahan *used his judicial position to remove funding from the Luzerne Court detention facility*, then “exerted influence to facilitate the construction, expansion and lease of the PACC facility.” On Luzerne County’s behalf, he signed a secret improper agreement “Placement Guarantee Agreement” with PACC. He also granted a corrupt injunction to prevent the results of a Pennsylvania Department of Public Welfare audit of PACC from being disclosed to the public.

In conjunction with Judge Conahan, Judge Ciavarella sentenced thousands of juveniles to terms of incarceration in violation of their constitutional rights – denying them counsel, the right to an impartial tribunal, and the right to free and voluntary guilty pleas. The two judges also pressured probation officers to make recommendations in favor of detention, even when they otherwise would have sought alternative sentences. [See: PLN, Nov. 2009, p.42; May 2009, p.20; <https://www.prisonlegalnews.org/news/2010/jun/15/pennsylvania-judges-involved-in-corruption-case-face-liability-5000-convictions-thrown-out/>]. Such egregious judicial corruption is unprecedented in my 30+ year experience of reviewing cases in dozens of states. Did such an improper agreement happen again in PA vs Sandusky?

The current investigative hypothesis of a Cleland-Fina-Amendolan improper agreement to sabotage and/or manipulate the PA vs Sandusky trial with -- an “impossibly rapid” trial schedule created at a secret-not reported-Motel meeting kept secret for 4 years after the trial-conviction, plus no Memory-False Memory expert, plus no Improper Interviewing methodology expert, plus no FRYE hearing, plus no discussion of the underlying Economic-Political pressures, plus no discussion of the history of the Memory Wars and the thousands of false memories of abuse implanted by RRM-MPD-DISS therapists and debunked by the FBI – such an improper agreement frankly looks quite tame indeed compared to the infamous “Cash for Kids” historic corruption in PA which resulted in the PA SUP CT overturning some 4,000 sabotaged, manipulated convictions!

**6B4. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Reportedly – YET ANOTHER PA SUPREME JUSTICE WAS SENTENCED TO CONFINEMENT for ILLEGAL POLITICAL ABUSE OF GOVERNMENT WORKERS.** Reportedly -- Additional Indicia of Corruption in the PA Legal System: Joan Orie Melvin is a former justice of the Pennsylvania Supreme Court. In 2013, Melvin was convicted of several criminal counts related to her use of legislative and judicial staff to perform campaign work. *Justice Joan Orie MELVIN resigned from the PA SUP CT as of May 1, 2014, a few days before she was sentenced to confinement for illegally using court and legislative employees to work on her political campaigns. That sentence is on hold while she*

appeals. See, <https://www.nydailynews.com/news/politics/pennsylvania-justice-porn-email-scandal-retires-article-1.1988800> and

**6C. INDICIA OF CORRUPTION in the case of PA v SANDUSKY? Does the historic evidence of general corruption in the PA legal system help us predict the misconduct in this case?**

**6C1. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**On this record, it appears that** an unprecedented collections of suspended, prosecuted, disbarred, imprisoned, fied, reprimanded, and/or corrupt Lawyers, Investigators, and Judges were involved in this case (misconduct documented after the trial of this case is still illustrative of the character of the attorney, some of the misconduct occurred during the PA v Sandusky case). On this record: An unprecedented -- in my 30+ year experience -- astonishingly defective group of unethical, troubled, and/or suspended and/or prosecuted and/or imprisoned and/or publicly reprimanded and/or fired and/or negligent group of investigators, lawyers, and judges were involved in this historically defective case.

**6C2. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Reportedly** – The DECEMBER 15, 2011 SECRET HILTON GARDEN MOTEL MEETING produced a “impossibly rapid” trial schedule that sealed the fate of the defendant – with no discussions of such decisions on the record. Are such “secret” meetings unusual in PA?

Reportedly, AN UNPRECEDENTED ***SECRET*** “OFF THE RECORD” MEETING was held in a local Hilton Garden Motel involving Judge Cleland, prosecutors Fina and McGettigan, and Defense Counsel, Amendola. A key investigative hypothesis is that these “improper lawyers and an improper judge” entered into an improper agreement at this secret meeting to set a corrupt “likely conviction impossibly rapid” trial schedule thus “rigging the outcome” of PA v Sandusky to ensure a rapid and sure conviction and thus prevent the expected NCAA “Death Penalty” to PSU football program that would have resulted in over \$500 MILLION in economic damages to the local economy and PSU as well as assist the political goals of Gov. Corbett. Judge Cleland, Prosecutor Fina, and Defense Attorney Amendola ALL reportedly, not only unethically attended this corrupt meeting but then collusively HID all evidence of this corrupt meeting until 4 YEARS AFTER the trial and conviction of the defendant. Reportedly, even defense co-counsel Rominger was NOT told about the corrupt, secret, Motel meeting until 4 years later. (See, Rominger’s testimony in a subsequent appellate hearing). ***When the secret meeting finally became public Judge Cleland recused himself from the case.*** Has such a “secret” “off the record” meeting ever be held in any other PA case? If so, which case and who was involved?

**6C3. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Investigator Leiter.** INDICIA OF CORRUPTION IN THIS CASE: Reportedly -- Investigator Leiter recorded a discussion of the Government's corrupt, abusive, improper, repetitive Memory Manipulating interview scam in this case. On this record, in PA v Sandusky, Inv. Leiter's inadvertent recording of April 21, 2011 appears to be a clear discussion of an Improper, Systemic, Abusive Government Witness Memory Manipulation Scheme much like other infamous cases such as Wenatchee, McMartin, Kelley Michaels and the RRM-MPD-DISS malpractice trials and Licensing Revocation Actions. Investigator Leiter confessed on a recording during the April 21, 2011 interview of BH. He described his abusive, improper, unethical, repetitive, leading-suggestive, memory manipulation strategy. Was the failure to record all interviews Negligence or an improper agreement to obstruct justice? That is, recordings were destroyed if they documented abusive interviews. How many interviews were NOT properly recorded or documented in any way?

**OPINION:** THE TAPED discussion OF INV LEITER on April 21, 2011 documents a corrupt, abusive, historically defective interview system that appears carefully designed to *to MANIPULATE, SHAPE, and CHANGE WITNESS "MEMORIES" into agreement with Leiter's pre-conceived ideas that fit the government's narrative of this case.* (e.g., *Classic Confirmation Bias*) : See, Investigator Leiter's recorded discussion discussion of an Abusive, Improper, Systemic Government Witness Manipulation Scheme of April 21, 2011 s

*Inv. Leiter's Recorded Confession of Systemic Witness Tampering by the Government Was Never Properly Presented to the Jury with an Expert Witness in memory to explain how memory contaminative such a procedure could be.* : All legal professionals in this case appears to have Negligently and/or Improperly Failed to Properly Deal With the Systemic Witness Tampering Methods Disclosed in Investigator Leiter's Recorded Statement (his discussion) : All attorneys (both sides) appear to have negligently failed to note and properly deal with Investigator Leiter's recorded statement (confession) of abusive, unethical, corrupt, systemic witness tampering: The attorneys (and all of them) in this case negligently or improperly failed to note and expose at trial — and provide competent expert witness testimony at trial to help the jury understand the well-documented dangers of such abusive and corrupt interviewing procedures. (See, Police Investigator Leiter's recorded confession at the April 21, 2011 interview of BH. During a break in the interview Inv. Leiter apparently forgot he left the recorder running and told others in the room (apparently Inv. Rossman and/or Lawyer Benjamin Andreozzi his starkly corrupt, unethical, and abusive interview methods. Essentially Inv. Leiter's confessed methods

sometimes took “months” of “repetition, repetition” until the witness agrees with Inv. Leiter’s pre-conceived theory of the case. (E.g. Confirmation Bias).

TRANSCRIPT of Inv Leiter’s recorded statements of April 21, 2011 -- (i.e., an historic confession of corrupt, abusive, Systemic Witness Memory Manipulation Methods ):

Inv. Leiter: “**That’s the way it was with the first one.** *It took MONTHS to get this first kid that brought this to our attention.* *It took MONTHS to get him ... because it was ... well he would rub my shoulders and then he would do this ... it just took REPETITION and REPETITION and then finally he would tell us what happened*”. ... [note the repetition questions = memory tampering manipulation plus the obvious, extraordinary confirmation bias, plus Inv Leiter clearly falsely believes he is a “human lie detector”, an unresolved question is how many interviews, using the “repetition for months” to “get him” were NOT recorded? Was there Obstruction of Justice to engage in interviews that were NOT recorded because they were abusively repetitive, leading, and suggestive? Was there Obstruction of Justice to record interviews then destroy the recordings if the interviews were damaging to the prosecution case?

INDICIA OF CORRUPTION – See, INV. LEITER’s TAPED CONFESSION of April 21, 2011:

See, 1:11:26 : Lawyer Andreozzi: “Can we at some point in time say to him [ the witness ]...”listen we’ve interviewed other kids, other kids have told us that there was intercourse and that they’ve admitted this, um, is there anything else that you want to tell us”

**Speaker Inv. Leiter (i.e., historic confession of corrupt, abusive, Systemic Witness Memory Manipulation Method) :** “*We do that with ALL the other kids and they listen ... This is what we've found so far and you do fit the same pattern as ALL the other ones*” (NOTE: e.g., Leiter admits to lying to witnesses and demonstrates a Confirmation Bias even though many interviewees apparently said no abuse ever happened), **that’s the way he (Sandusky) operates and we know** (NOTE: e.g. a LIE and Confirmation Bias) **the progression of the way he operates** (NOTE: e.g. a LIE and Confirmation Bias) *and the other kids we've dealt with have told us that this has happened after this and did that happen with you?*

1:12:05 Speaker Lawyer Andreozzi: “*And I need to tell ‘em (that) too. OK.” ... ]*

**Dr Barden’s Opinion:** This appears to be an historic taped confession of an abusive, systemically corrupt interviewing procedure for Government Witness Memory Tampering (see Wenatchee, McMartin, Kelly Michaels, and dozens of RRM-MPD-DISS therapist malpractice cases involving thousands of false memories of abuse generated by RRM-MPD-DISS therapists. This taped

confession is quite consistent with the Investigative Theory of a *Culture of Corruption* in the State of Pennsylvania legal system and in this case.

In addition, alleged victim AM's reported statement is very consistent with Leiter's confession report of abusive interviewing. On this record, alleged victim 2's (AM's) initial statements reportedly claimed he was "the boy in the shower" and that he reported suffering NO abuse at all from the defendant in this case. AM did not testify at trial as a witness in Sandusky's defense, reportedly because Attorney Shubin actually hid AM in an undisclosed location. (See, AM's statement to Investigator Everhart). Consistent with this analysis on Nov 9, 2011 alleged victim #2 (AM), reportedly told investigator Curtis Everhart, "never in my life did I ever feel uncomfortable or violated by Sandusky...never did Jerry do wrong by me... I will never have anything bad to say about Jerry". In addition, *in the Everhart interview the alleged victim AM reported gross misconduct by the investigators consistent with Inv. Leiter's recorded statements of April 21, 2011* -- documenting a highly improper, systemic, abusive, memory-contaminative government system of Memory Manipulation interviewing (See detailed analysis below). AM reportedly told Everhart, after telling PSP interviewers that Sandusky never mistreated or abused him in any way "*I felt very uncomfortable with the PSP interview process as they would try to put words in my mouth and take my statements out of context. The PSP investigators were clearly very angry and upset when I would not say they wanted to hear.*" (Exhibit D, Interview with Everhart in Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022). This is confirmation, corroborative evidence of Leiter's confession of April 21, 2011.

#### **6C4. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

Frank Fina, JD . Reportedly -- How about Sandusky Prosecutor Frank Fina? Mr. Fina's law license was reportedly suspended for a full year by the State of PA for reportedly (deceitfully) manipulating a judge. AG Prosecutor Fina – the key prosecutor in PA v Sandusky -- was also, reportedly, guilty of transmitting massive batches of depraved, violent, racist, pornography files on Government Time and over Government email systems to PA Attorney General prosecutors and PA Supreme Court judges? Amelia Kittredge with the PA Office of Disciplinary Counsel called AG Prosecutor Fina "someone who cannot or will not separate right from wrong. "

##### **Prosecutor Fina – Law License Suspended for Unethical, Misconduct —**

*Frank Fina, JD – The key AG prosecutor in the Sandusky case was reportedly found guilty of unethical misconduct in the case. Mr Fina's law license was suspended for a year for unethical misconduct by the PA Supreme Court. The justices issued a 5-1 decision to suspend Frank Fina's law license for*

*a year* agreeing with the Office of Disciplinary Counsel that Fina's actions were unethical and improper .... "Mr. Fina chose to mislead the supervising judge, causing that jurist to believe such resolution was unnecessary because Fina undertook to refrain from inquiry into areas of potential privilege," Wecht wrote. "Fina promptly and unethically reneged on those assurances. This conduct fell far below the ethical standard we rightly demand of a prosecutor in this type of situation." ... "Amelia Kittredge with the Office of Disciplinary Counsel called AG Prosecutor Fina "someone who cannot or will not separate right from wrong."

See, Feb. 19, 2020 news that Sandusky **prosecutor Frank Fina loses his law license for a year** ... <https://www.pennlive.com/news/2020/02/frank-fina-sandusky-prosecutor-and-former-penn-state-lawyer-loses-his-law-license-for-a-year.html>

See also, Prosecutor who led Jerry Sandusky investigation disciplined by Pa. Supreme Court. A lawyer who led the child molestation investigation and prosecution of former Penn State assistant football coach Jerry Sandusky lost his law license for a year Wednesday over his handling of a grand jury witness in the case, the Pennsylvania Supreme Court ruled.

<https://www.mccall.com/news/pennsylvania/mc-nws-pa-frank-fina-license-suspended-20200219-meuwodyplrfwzkfwzfru6vng6y-story.html>

**Reportedly -- WAS FINA ALSO A PORNOGRAPHY ADDICT? :**

See, Porn, Emails And Criminal Charges: Multiple Scandals Embroil Pennsylvania's Legal Community. Insisting that she has done nothing wrong, Kane said in August that the chain of events that led to the charges against her "*began with a group of state prosecutors and judges passing pornographic, racially offensive, and religiously offensive emails amongst each other — email traffic sent and received on government computers, and on government time.*" ... Kane said she became a target as soon as she announced that her office's inquiry would unearth every email that had passed through CORBETT's and KELLY's offices. In their inquiry, investigators pulled together thousands of raunchy emails between officials, many of which had been forwarded on to others.

Hundreds of pages of those porn emails — and their attached images — were released in late August, under an order by the Pennsylvania Supreme Court. Many were sent either from or to high-ranking officials.

As Metro US reported: "*Several of the [ violent, racist, explicit, hard core ] porn emails originated with Frank Fina, a former prosecutor at the Attorney General's office and the lead prosecutor in the Sandusky case ....*"  
<https://www.wbur.org/npr/454872418/porn-emails-and-criminal-charges-scandal-embroils-pennsylvanias-legal-community>

See the exposés reported regarding PA Supreme Court Justices and AG prosecutors like Sandusky prosecutor Frank Fina. They were reportedly sharing depraved, *hard-core, violent, sexist and racist pornography*, The Philadelphia Daily News published an editorial calling for PA Supreme Court Justice Eakin to be removed from office, citing conduct "so extreme that it brought the judicial office into disrepute," and saying, "the Eakin case is the tipping point we need to change the system."..."Governor Wolf then called on Eakin to resign. The governor's spokesperson said, "This process is absurd...Justice Eakin's behavior is reprehensible and beyond unbecoming of an individual, let alone a supreme court Justice." The Pennsylvania Judicial Conduct Board reviewed the matter directly and charged Eakin with violating the state's rules of judicial conduct and the state constitution. They said he participated knowingly and often in email chains that were sexually suggestive, vulgar, and **offensive**"

See, Hundreds of Pages of PA Prosecutor's Pornographic Emails Released. by Joanna Rothkopf, August 27, 2015. "On Monday, Pennsylvania Attorney General Kathleen Kane was instructed to stand trial for charges of perjury and obstruction of justice. Prior to her trial she revealed that a main enemy, *Philadelphia prosecutor Frank Fina, had amassed thousands of emails containing graphic (explicit, violent, racist) pornographic content.*" On Wednesday, Fina's porno collection was released to the public. "*The attorney general knew full well that Mr. Fina had a pornography collection of thousands and thousands of images, inappropriate statements, misogynist points of view and disgraceful content,*" said Kane's attorney Gerald Shargel in the middle of the hearing <https://jezebel.com/hundreds-of-pages-of-pa-prosecutors-pornographic-emails-1727004974>

And ... Sandusky prosecutor FINA RESIGNS amid email scandal June 7, 2016, "The prosecutor at the center of an email scandal that sparked fallout across Pennsylvania's legal system has resigned from his job at the Philadelphia District Attorney's Office. Frank Fina had been with the city DA's office since

2013. Action News learned Tuesday that *Fina quietly resigned last month*. Fina was a lead prosecutor in the Jerry Sandusky case when he worked at the state Attorney General's office. But he's also tied to the pornographic email scandal that has already forced two state Supreme Court justices to step down. See, <https://6abc.com/frank-fina-resigns-porngate-email-scandal/1375462/>

**6C5. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**History of Improper Misconduct? How about PA Attorney Generals Corbett and Kelly?**

“PA prosecutor Moulton discovered more than *1500 pornographic emails containing videos and pictures that had been exchanged during the Corbett and Kelly PA Attorney General administrations among prosecutors and investigators in the Office of the Attorney General, politicians, and judges, including state Supreme Court Justices Seamus McCaffery and Michael Eakin*. Moulton found the pornography exchanges amid **recovered emails that had been ordered deleted from the offices of former attorneys general Corbett and Kelly.**

See, The Great Pennsylvania Government Porn Caper... “Loads of pornography littered the exchanges between government officials like so much cow sh\*t in an open field. Office-secretary porn. Sarah Palin-Photoshopped porn. Hardcore, objects-stuck-in-a-woman's-every-orifice porn. The more she clicked, the worse it got. Fat jokes. Gay jokes. Racist jokes. Domestic-violence jokes. ***The bulk of which were sent on state computers, on state time, from one state employee to another.*** The emails on the disc were just the tip of the iceberg; the full scope wasn't immediately clear. In time, Kane and everyone else in the state would come to realize the emails were like strands of a spiderweb, stretching out in every possible direction, connecting small-town attorneys to big-name prosecutors to State Supreme Court Justices.”

The men exchanging these images were among the most prominent names in the state's judicial system. And *they'd been doing it for years*, with no fear of being reprimanded. *No*, Kane thought. *This is wrong. All wrong.* She had to blow the whistle, to show Pennsylvanians the true personas of men they could someday face inside a courtroom.

At first, Kane identified only a handful of top figures *on then-Governor Tom Corbett's staff. Corbett condemned the exchanges and called on the participants to resign. But the list of the participants kept growing. And growing.*"

<https://www.esquire.com/news-politics/a42234/porngate-pennsylvania-kathleen-kane/>

## 6C6. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?*

### Judge Feudal History of Improper Misconduct?

**Reportedly – Judge Feudal was reportedly removed for unethical misconduct and an improper relationship with Prosecutor FINA.**

Alt Hyp Questions: How about Sandusky case PA Grand Jury Judge Feudal who was reportedly removed by the PA Supreme Court for Unethical Misconduct?

See, "The Philadelphia Inquirer published a report concerning emails sent and received from the *private email account of Judge Barry F. Feudale*. Metadata from the Office of Attorney General's servers confirm the following: These emails are currently housed on Office of Attorney General servers. Any implication that the OAG is in possession of emails from Judge Feudale's personal email account that are not currently on OAG servers is false. Any implication that these emails are on OAG servers by any other means than the ordinary course of business is, again, false.... Contrary to impressions created by the Philadelphia Inquirer's story that Judge Feudale was concerned with the law or his commitment to secrecy, make no mistake: ***Judge Feudale's overriding concern was how to leak sealed Supreme Court documents without getting caught.... The seriousness of this reckless breach of sealed Supreme Court documents, orchestrated by the presiding judge of a state investigative grand jury, with attorneys and the very reporters who have covered some of the Sandusky, Computergate, and Bonusgate cases, cannot be overstated. The OAG is currently litigating post-conviction motions involving these cases. I have instructed my office to send a complete set of these emails to the Judicial Conduct Board.***" <https://www.wgal.com/article/kane-responds-to-report-about-judge-feudale-emails/6239651>

**AND**

"The Pennsylvania Supreme Court has removed a senior judge who once presided over many of the state's biggest grand jury investigations, accusing him of judicial misconduct and abandoning his sense of objectivity during a feud with Attorney

General Kathleen G. Kane. In a letter, the PA high court told *Barry F. Feudale it was "deeply concerned" about his judgment and behavior, citing in part emails he sent to Inquirer reporters* after Kane had successfully bid to have him ousted as the supervising grand jury judge in Harrisburg.... *The court also said it believed that Feudale's judicial objectivity had been "clouded" by his relationship with a former prosecutor in Kane's office - a reference to Frank Fina*, the once-ranking prosecutor in the Attorney General's Office who has been in a long-running feud with Kane. The court's letter, dated Oct. 20 and obtained this week by The Inquirer, gave Feudale two weeks to respond. Apparently, he never did. On Nov. 12, the *court sent a second letter to Feudale, removing him*. See, <https://www.mccall.com/news/pennsylvania/mc-pa-kathleen-kane-judge-removed-20151127-story.html>

**6C7. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

**Attorney Rominger Alt Hyp: History of Improper Misconduct?**

Reportedly -- *Defense Attorney Rominger - Criminal Conviction and Imprisonment* for Deceitfully Manipulating Clients (Embezzlement) — A PA v Sandusky case involved attorney - Mr. Karl Rominger, JD, subsequent to the Sandusky trial *was convicted of felony embezzlement and imprisoned for five years*. In addition, in my opinion, Mr Rominger demonstrated Negligence and misconduct at the Sandusky trial by failing to conduct a proper investigation, failing to obtain a competent memory-false memory expert, failing to obtain a competent Daubert expert, failing to obtain a competent investigation methodology expert, failing to obtain a proper psychotherapy malpractice expert, failing to have his client testify at trial and other errors.

**6C8. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

**Attorney Baldwin, Former Judge and PA Supreme Court Justice. History of Improper Misconduct?**

Reportedly -- PSU Attorney Baldwin – Reportedly received a humiliating Public Reprimand for her Unethical, Manipulative Misconduct and violation of Attorney-Client Privilege — Yet another former PA SUP CT Justice-attorney involved in PA v Sandusky, at the time Penn State Counsel Cynthia Baldwin, JD reportedly was *formally reprimanded by the Pennsylvania Supreme Court for manipulative unethical misconduct related to the Sandusky case*. Baldwin reportedly was present at the Grand Jury as the lawyer representing 3 clients -- witnesses Spanier, Curley, and Shultz. Her representation of a witness

was apparently, under PA rules, the only reason Baldwin was permitted in the Grand Jury room. Then later, having apparently misled the court, Baldwin then reportedly “switched” and later claimed that actually, she had only been representing PSU and NOT her three clients. She later reportedly testified against her own clients leading to their prosecution. This kind of misconduct is highly unusual in my experience.

**6C9. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Judge Cleland Investigative Questions: History of Improper Misconduct?**

**Reportedly** -- Judge John Cleland *reportedly recused himself following Public Exposure of an apparently unprecedented, never explained, “off the record”, un-recorded, un-transcribed, “secret” meeting with prosecutors and defense lawyers at a local Motel (Hilton Garden Inn).*

***That apparently corrupt meeting reportedly produced as “likely-conviction-death-march”, trial schedule that precluded any chance of a fair trial.*** Even highly specialized experts in such cases could NOT properly prepare and try such a complex case on the “likely-conviction-death-march” schedule set by Judge Cleland at his reportedly “secret off-the-record”, unrecorded, apparently improper meeting at the Hilton Garden Inn with apparently improper (license suspended for misleading a judge) Prosecutor Frank Fina and apparently improper defense lawyer Amendola (e.g. Amendola attended a “secret, corrupt, off the record meeting” then HID this unprecedeted “secret” meeting from his own defense co-counsel Rominger until years after the trial and conviction in PA vs Sandusky). ***During the trial it appears that Amendola behaved at times like an attorney determined to harm his client’s case, with no competent science experts, no competent science consultant to draft RRM-MPD-DISS questions, no motion for a FRYE hearing, and convincing his client to NOT testify in his own defense (often a fatal error in such cases), etc.***

Reportedly, when Judge Cleland’s secret, unrecorded, unreported, local Motel meeting with AG Fina and Defense counsel Amendola finally did became public – 4 YEARS after the trial and conviction - - Judge Cleland recused himself . Just how unusual was the secret, Motel meeting that produced two essential trial-controlling decisions (1- waived defendant’s right to a preminary hearing and 2- set an impossibly rapid “impossibly rapid”, no time to properly prepare, trial schedule) such decisions were reached with no discussions on the record? See, Briefs, Motion, Appeals, and Media:

<https://www.fox43.com/article/news/local/contests/judge-john-cleland-recusing-himself-from-all-future-jerry-sandusky-hearings/521-cfb89259-236f-4a6c-997f-b6d8a8cfbd29>

**EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?*** Judge Cleland’s apparent sabotage of the Defense Case *during the trial*:

On this record, Judge Cleland bizarrely (or conspiratorially) dismissed concerns about the way Rossman and Leiter questioned BH or other “victims” and whether their interview methodology was likely to lead to false allegations.

Specifically, on this record, at trial Judge Cleland reportedly said “***The issue is not whether or not the witness's testimony was corrupted by any questions***”. Was this wildly false and trial contaminating statement a result of science-uninformed Negligence or a just another part of an improper agreement to sabotage the trial?

Cleland reportedly also instructed the jurors. “*The purpose of the evidence is to show that the troopers didn't tell the truth, not that BH didn't tell the truth.*”

*Judge Cleland's statements appear to eviscerate the most essential defense argument in such a case – that improper interviewing produced “changed-false” memories of abuse.*

Having litigated or consulted on hundreds of “recovered memory therapist” lawsuits in many states , consulted on multiple licensing revocation actions against “recovered memory therapists” and having testified in many criminal cases and family law cases where “memories”, “morphing memories”, “question contaminated memories”, and related issues are essential, having written international reviews for Oxford University Press and Reuters-Thompson Publishers, having given invited talks on these and related issues at the national conventions of psychologists (APA), psychiatrists (APA), lawyers (ABA) and the US Surgeon General’s conference, and having given training talks to Federal Judges, Sex Crimes Investigators Association conventions, and the FBI -- this statement by Judge Cleland “***The issue is not whether or not the witness's testimony was corrupted by any questions,***” is the most science-uninformed, incompetent, improper, illogical, and/or corrupt attempt to manipulate a trial to ensure a rapid conviction of the defendant that I’ve seen (e.g., just like Judge Cleland’s secret meeting at the Hilton Garden Inn producing his order for a “likely-conviction-death-march” schedule to overwhelm and crush the local science-uninformed defense counsel at the only such “secret meeting” I’ve seen or even heard of over the past 30 years.

Judge Cleland’s misleading and apparently corrupt statement that “***The issue is not whether or not the witness's testimony was corrupted by any questions***” is, in my opinion, further evidence of a Culture of Corruption in the legal system of the State of Pennsylvania. Note that multiple other States – with more science-literate or less corrupt legal systems spent enormous amounts of time and resources getting this issue right – in detailed Frye-Daubert science hearings involving multiple national experts (see numerous citations above). In all such hearings in which I have been involved in – those courts rejected recovered repressed (“dissociated”) memories of trauma as unproven, unreliable, NOT accepted by the relevant scientific community, and having NO known error rate (thus possibly 100% false) thus ***excluding the junk science based testimony and dismissing the entire case.***

It is truly astonishing that nobody involved in this case including the Freeh Group, the NCAA, the AG's office, the National and Local Media nor the incompetent, overwhelmed defense attorneys raised the issue of the wildly controversial claim that “”buried trauma memories reliably are reported following psychotherapy and lawyer interviews -- after being “blocked out”. *A properly held Frye hearing would likely have eliminated many – if not all – of the alleged victims testimony in this case as RRM-MPD-DISS ideology and methods have been rejected by the relevant scientific community* (e.g. Frye standard) as a “pernicious myth” and would have resulted in a competent defense expert explaining the ease with which therapist/lawyer interviews can change-morph, distort, and contaminate “memories” as well as the U.S. history of thousands of RRM-MPD-DISS abuse hysteria-satanic cult hysteria - false memory cases debunked by law enforcement and others. Such a result would have produced a properly competent trial in this matter instead of the tragic debacle of the science-uninformed criminal investigation and trial that is documented on this record. The people of the State of Pennsylvania deserve a more competent, less corrupt legal system and public hearings at the Pennsylvania State Legislature would help to fully document what actually happened at the secret Motel meeting, was well as what actually happened in the investigation and trial of this very complex and controversial matter.

**6C10. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**ADDITIONAL INDICIA OF CORRUPTION, RRM-MPD-DISS evidence on the record:**

Obvious “recovered repressed memories” and the underlying RRM-MPD-DISS ideology were never challenged at trial, no competent science Memory-False Memory expert debunked such inherently unreliable memories, no science expert exposed Leiter’s corrupt interviewing practices. Were such coordinated, multiple, unprecedented, egregious defense counsel “errors” possible without an actual improper agreement to sabotage the defendant’s case?

EVIDENCE OF RECOVERED REPRESSED (buried, blocked, dissociated) MEMORIES IN THIS CASE-- IDEOLOGY, METHODS, and PRACTICES :

*Evidence of Recovered Repressed (buried, blocked, etc) Memories in this statement from Corbett protégé PA Attorney General Linda Kelly.*

“It was incredibly difficult for some of them to unearth BURIED memories of the shocking abuse they suffered. Most of us cannot possibly fully comprehend what they testified.” See,

[https://www.pennlive.com/midstate/2012/06/jerry\\_sandusky\\_verdict\\_attorne.html](https://www.pennlive.com/midstate/2012/06/jerry_sandusky_verdict_attorne.html)

*More Evidence of Recovered Repressed (buried, blocked, etc) Memories in this case from Alleged Victim DS.*

At trial (Day 3), Witness DS was asked if his testimony had changed dramatically over previous months. He said “Yes. That doorway that I had closed has since been reopening more. More things have been COMING BACK and things have changed since that grand jury testimony. Through counseling and different things, I can remember a lot more detail that I had pushed aside than I did at that point.” (Trial transcript, Day 3, p. 143) ...

AND Witness DS also said...

“Through counseling and through talking about things in my past, different things triggered different memories and I have had more things COME BACK, and its changed a lot about what I can remember today and what I could remember before, because I had everything BLOCKED OUT.” (Trial Transcript, Day 3, p. 152 )

AND Witness DS also said...

“During his testimony, DS also revealed that he and alleged victim ZK had talked about how their therapy was going. “ZK would ask me sort of what happened to me almost—I feel so that he could confide in me. But he had asked me if I remembered anything MORE, if counseling was helping ...” (Trial Transcript, Day 3, p. 154 )

AND Witness DS also said...

When Prosecutor McGettigan asked DS why he hadn’t disclosed Sandusky’s abuse to the police during his first or second interrogation, DS explained: “I had sort of BLOCKED OUT that part of my life. Obviously, going to football games and those kinds of things, I had chosen to sort of to keep out in the open, so to speak. And then the more negative things, I had sort of pushed into the back of my mind, sort of like closing a door, closing—putting stuff in the attic and closing the door to it. That’s what I feel like I did.” (Footnote 11, Trial Transcript, Day 3, p. 119).

AND Witness DS also said...

Witness DS was reportedly the only alleged Sandusky victim who agreed to speak to science writer and expert on RRM, Mark Pendergast -- a Harvard College Alumni journalist/author who has written several books on RRM-MPD-DISSL history and ideology. In October 2014, Pendergast reportedly spoke with Witness DS at length in his home in State College, Pennsylvania, with follow-up by email and phone, and *Mr. DS verified that he had indeed recovered memories of abuse in therapy and that he thought the door to his abuse memories was still only partly open*. Pendergast reported DS

said he remained in therapy with Cindy MacNab at The Highlands in State College, a therapist reportedly suggested to and working with his civil lawyer, Andrew Shubin.

DS reportedly told Pendergrast, “Actually both of my therapists have suggested that I have repressed memories, and that's why we have been working on looking back on my life for triggers. My therapist has suggested that I may still have more repressed memories that have yet to be revealed, and this could be a big cause of the depression that I still carry today. We are still currently working on that.” (See, Pendergrast Interview of DS, DS Email, Oct. 15, 2014.) (See, Pendergrast, M., *The Most Hated Man in America: Jerry Sandusky and the Rush to Judgment*, Sunbury Press (2017) ISBN-10: 162006765X; ISBN-13: 978-1620067659. )

*More Evidence of Recovered Repressed (buried, blocked, etc) Memories and Debunked Multiple Personality Disorder Methods and RRM Ideology in this case from Alleged Victim MS and his book.*

In 2016, alleged victim MS wrote “Undaunted: Breaking My Silence to Overcome the Trauma of Child Sexual Abuse” in which he reported radically transformed “new memories” of childhood abuse. MS disclosed classic RRM-MPD “dissociation” therapy methods. For example, he reportedly printed a conversation with his “inner child” in which he recovered a new (developmentally virtually impossible) memory of being abused at TWO years of age (Note: Virtually Zero chance of accuracy as 2 yrs olds’ memories are quite unreliable due to the well-documented process of infantile amnesia). In his newly recovered “memory” MS claimed his father was “holding the red-hot flame of a cigarette lighter to his tiny, fragile toes” [Zero medical evidence of burns or scars on this record.] **He said “this is what I do now for my INNER CHILD. I tell him (note the bizarre, debunked, inherently unreliable Multiple Personality aspect of this reported conversation with MS’s “inner child”) that it is safe to disclose, to admit what happened, to me”.** MS noted that he “had to access the traumatized child self “I this is an example of junk-science RRM-MPD therapy for which therapists LOST their license /.. in order to heal. MS further writes, “I had kept my child self LOCKED UP in the prison of my pain and my silence where HE (the “inner child” personality) couldn’t grow up.” (This is Classic Multiple Personality Ideology junk science).

MS continued his classic RRM-MPD-DISS discussion writing that his “mental escape mechanisms allowed him to take his mind away”. He writes that when he unearthed his memories “I felt like my mind had been a swollen wound full of infection

and pus, and I had lanced it and all the poisonous junk had flowed out”.. He continued, these were “things I had kept hidden deep within me in the deepest LOCKED DOORS of my heart.” (very standard, inherently unreliable, RRM-MPD-DISS ideology, practices and ideas EXCLUDED in multiple Frye and Daubert hearings in multiple states and IGNORED by negligent and/or corrupt sabotage by defense counsel ). MS went on to write, the shame of abuse led him to “put it away in a compartment of your brain, and LOCK THE KEY to that dark place forever, which is the way a victim DISSOCIATES and denies.” MS continued, “The more I tried to BLOCK IT OUT, the more visuals I would see. I had denied it for so long that now I was owning up to it, the (recovered repressed) memories flooding over me. I had spent most of my life blocking out or DISSOCIATING from the victimization.” MS disclosed that he had been seeing a “specialized trauma therapist” for years when he wrote the book. Having perfectly described the classic recovered repressed memory RRM-MPD-DISS inherently unreliable process — including a DISSOCIATED “inner child” personality — MS futilely tried to claim that he had not really “recovered memories” — apparently knowing that the legal and science worlds had debunked RRM-MPD-DISS “memories” long ago. (See, *Undaunted* by MS at pg 20, 63, 122, 142, 146-155, 164, 192-193 ; See, M. Pendergrast book on the Sandusky case).

[ Note the theories and methods MS is describing are the classic controversial, inherently unreliable RRM-MPD-DISS psychobabble debunked by dozens of research studies and excluded in multiple states following complex FRYE and/or Daubert science hearings as unreliable junk science, a “pernicious myth”, rejected by the relevant scientific community.]

**More Evidence of Recovered Repressed (buried, blocked, etc) Memories in this case from Alleged Victim BH at Trial:** On the witness stand, BH reportedly stated at Trial... “I have spent, you know, so many years BURYING this in the back of my head forever”. [ Although BH admitted to major transformation in his “memory” stories over time, Attorney Amendola negligently failed to properly follow-up and ask how these “buried memories” were brought to the surface.]

**More Evidence of Recovered Repressed (buried, blocked, etc) Memories in this case from Alleged Victims.**

Testimony at trial J.S., B.S.H. and Z.K. reportedly also claimed their “memories” of abuse changed over time *as a result of psychotherapy* helping them to *UNBLOCK memories of past trauma.* ....

Classic (Science-uninformed) Recovered Repressed Memory Quote from ZK's Attorney Howard Janet:

ZK's attorney, Howard Janet, explained in an interview how ZK and the other alleged victims could "*create a bit of a Chinese wall in their minds. They BURY these events*" that were so painful to them deep in their subconscious." [ Classic RRM-MPD-DISS pernicious myth – yet another gullible, science-uninformed believer. ]

#### **6C11. EXPORING CURRENT INVESTIGATIVE HYPOTHESES:**

**Therapist Gillum.** *More Evidence of Recovered Repressed (buried, blocked, etc) Memories in this case from local, apparently science-uninformed, Psychotherapist Gillum's book: "Emotional signs of trauma, however, can remain LOCKED within the victim's psyche as they search for the magic bullet to mask their pain."* Therapist Gillum's controversial RRM-MPD-DISS ideology has been called a "pernicious" *myth by the relevant scientific community.*

Therapist Gillum should be properly deposed by a science-literate attorney (or an JD-only litigator with a science consultant) to properly document Gillum's reportedly unethical misconduct and licensing violation boundary issues and other violations in this complex case.

Clearly, given Gillum's apparent views on RRM-MPD-DISS ideology Therapist Gillum (like therapist Macnab) appears to have engaged in unethical misconduct and licensing violations by failing to properly *obtain informed consent* from patients by failing to inform them of the hazards of induced false memories, the history of the Memory Wars, and the existence of MUCH scientific research debunking RRM-MPD-DISS ideology. (See the many citations in this report).

*More Evidence of Recovered Repressed (buried, blocked, etc) Memories in this case from Alleged Victim AF (regarding his 3 year therapist, Mike Gillum):*

At trial... AF said that his therapist Mike Gillum "believed something more did happen and we talked" ... he disclosed he'd been seeing Gillum for "quite some time now" (3 years). ... AF also disclosed that the investigators had told him what "memories" they expect to hear (See, Ins. Leiter's taped confession of just such Memory Manipulative interviewing procedures of April 21, 2011). The investigators AF said,

encouraged him to tell them more and as “other Second Mile alums were claiming abuse, “They said I’m not alone”, AF reported. (See Trial Transcript, Day 2, pg 4-104).

**6C12. Yet another Defective, apparently Science-uninformed local psychotherapist was involved tangentially in PA vs Sandusky: Alleged victim ZK’s psychotherapist Alycia Chambers reportedly taught ZK science-uninformed-defective hydraulic “venting” notion of stress reduction.**

“During a therapy session that Monday, Chambers probed ZK for the details of an outing with the defendant (witness tampering by a therapist intruding into investigation “memories”? ). .... Chambers at one point thought ZK seemed to be getting irritated, so she directed him to *do some “release” work*. In her notes, she expressed her satisfaction with the good job he did *whacking the chair with a tennis racket*. She explained how to make *a homemade punching bag so that he could release his anger safely at home*. On this record, *Chambers also violated her patients right to informed consent* and engaged in quack practices while failing to honestly and properly disclose the risks and benefits and alternative including CBT, Positive Psychology, Gratitude Journals, and Coping/Resilience Science treatments. (See, Pendergrast, M., *The Most Hated Man in America: Jerry Sandusky and the Rush to Judgment*, Sunbury Press (2017) ISBN-10: 162006765X; ISBN-13: 978-1620067659. )

On this record, it is not clear what, if any, other kinds of controversial “therapies” were provided to patients by Therapist Chambers. Her records should have been obtained and reviewed with a competent expert witness by defense counsel.

**6C13. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

Shubin and Macnab Investigative Questions: Were Attorney Shubin and Therapist Macnab in “business” together? Reportedly -- Additional Indicia of Corruption in the Newly Discovered evidence regarding alleged memory contaminator Attorney Shubin and his affiliated RRM therapist Macnab? ...

See previous review of the Newly Discovered Evidence interviews of SS-Shubin and AJ Dillon “sting investigation” recordings. Based on my initial review of the newly discovered SS-Shubin transcript, my further and ongoing investigation revealed that DS (Alleged Victim 7) in 2004, reportedly sent an application for financial aid writing “Jerry Sandusky, has helped me to

understand so much about myself. He is such a kind and caring gentleman, and I will never forget him." (N.T. Trial, Day 3 at 138).

Consistent with the evidence reported above, *after multiple reported meetings with Attorney Shubin and "therapy" with psychologist C. Macnab, DS's reported "memories" were apparently radically transformed into NEW "MEMORY" allegations of criminal abuse (worth millions of dollars)*. After exposure to Shubin and Macnab DS stated that "through counseling different "memories" were "triggered"... "that doorway that was closed, has since been opening more... through counseling and different things I can remember a lot more detail that I had pushed aside then" (N.T. Trial, day 3 at 143 in Defendant's Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022.

The potential memory contaminating effects of Shubin-Macnab were not properly explored at trial. Macnab's records were not obtained and reviewed by an expert for evidence of RRM-MPD-DISS memory contaminating therapy. The jury apparently learned nothing of this essential alternative hypothesis in the case.

#### **6C14. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

Was there an improper agreement in PA v SANDUSKY designed to produce a "sabotaged" trial? Is so, that would explain:

-- No Memory-False Memory, RRM-MPD-DISS Expert Witness ... a goal to leave no time to find and retain an actual *Science* Expert Witness on RRM-MPD-DISSOCIATION and False Memory issues (not local, science-uninformed therapists like Gillum and Macnab who "treated" several alleged victims in this case) -- (as result of an improper agreement a science-memory expert was never retained, and none testified at trial leaving the jury uninformed and/or misinformed about multiple key memory issues including THE SCIENCE OF FALSE-BUT-FERVENTLY-BELIEVED-IN-MEMORIES)

-- No Expert Memory Litigation Consultant -- the criminal co-conspirators also ensured there was no time to hire a science-litigation *consultant* to teach the poorly-trained, science uninformed local defense lawyers how to deal with the complex RRM-MPD-DISSOCIATION, changing "memories" issues so essential in this case and

-- No history of Therapist Quackery and License Revocations -- leave no time for an expert to properly instruct the jury as to the history of licensing revocations for the unethical, memory contaminating practices of RRM-MPD-DISS therapists like Gillum and Macnab (thus this history was never discussed) and

-- No history of the Infamous “False Conviction Cases” -- leave no time for an expert to properly instruct the jury as to the history of the Infamous “False Conviction Cases”: (e.g., Amirault, Wenatchee, Wee Care, Kelly Michaels, etc). On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

-- No history of the Thousands of Proven False “memories” Created by Therapists -- leave no time to properly instruct the jury as to the history of THOUSANDS of F.B.I. investigation-documented FALSE allegations of abuse such false memories being induced by improper RRM-MPD-DISS ideology therapists like Therapists Gillum and Macnab of this case (thus this history was never explained to the jury)

-- No Review of Essential Evidence -- leave no time to even review the crucial evidence in this complex case which could take a year or more (thus much essential evidence was never reviewed).

-- No FRYE Hearing -- leave no time to file a proper DAUBERT motion (thus no DAUBERT motion was ever filed and no DAUBERT hearing was held, despite other states throwing out such cases based on RRM-MPD-DISS radically changing “memories”)

-- No Proper or Competent Cross Examinations -- leave no time to prepare cross-examinations (thus the cross examinations were horrifically incompetent),

-- No Science Expert Explanation of the Memory Contaminative Power of Inv Leiter’s Confessed Corrupt Interview Practices -- leave no time to fully expose and have an expert explain the gravity of the corruption displayed by Investigator Leiter’s April 21, 2011 taped confession of massively unethical, improper, memory-manipulation, “repetition until the witness agrees” interviewing practices (thus the memory contaminative power of Leiter’s systemically abusive interview process was never properly disclosed and properly explained to the jury)

-- No Testimony by the Defendant -- and to ensure that when the time came Defense Counsel Amendola would convince Defendant Sandusky NOT to testify in his own behalf know that such a move would guarantee conviction (thus the Defendant did not testify and was convicted).

-- Was the Motivation for misconduct Prevention of the NCAA Death Penalty that would have produced a loss of \$500 MILLION and thus a Local Economic Disaster: Was the “likely-conviction-death-march” trial schedule and other corrupt goals designed to produce a very short trial and rapid conviction in order to prevent the PSU football program from receiving the publicly threatened NCAA “death penalty” closing down the PSU football program which *would have cost PSU and the local community hundreds of millions of dollars in economic damages ( losses of over \$100 million per year for multiple years)?*

#### **6C15. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

Was the “secret”, “off the record”, unreported, Hilton Garden Motel meeting “likely-conviction-death-march” trial schedule of Cleland-Fina-Amendola designed to:

- A) give lawyer Amendola cover and an excuse to not even bother to review the evidence, which was reportedly not even gathered at that time, and
- B) give lawyer Amendola cover and an excuse to not even bother to retain proper Memory-False Memory-RRM-MPD-DISS expert witnesses to instruct the defense attorneys and the jury regarding the very essential and very complex science issues in this case, and
- C) give lawyer Amendola cover and an excuse to not even bother to put together a competent FRYE motion and hearing which could have resulted in the testimony of many if not all “victims” who experienced radical changes in “memories” following multiple therapist-civil attorney meetings being excluded. (See the section on ignored Basic Essential Science-History above).
- D) give lawyer Amendola cover and an excuse to not even bother to gather key evidence in the case including the certified-to-be-complete mental health records of all alleged victims including ALL therapy sessions and especially joint-group therapy sessions, hypnotic procedures, etc.
- E) give lawyer Amendola cover and an excuse to not prepare competent cross examinations of the prosecution witnesses.

**6C16. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption ?***

Dr Barden’s Notes and Investigative Hypotheses: In a non-corrupt legal system involving ethical attorneys -- local defense counsel Amendola *would have refused to attend a secret, “off the record”, unrecorded, un-transcribed meeting with Judge Cleland and the prosecutor Fina*, to set an all-important trial schedule and for the “defense” to suicidally waive a preliminary hearing where they could have questioned the alleged victims about their mental health history, exposure to RRM-MPD-DISS ideology, exposure to civil attorneys offering millions for abuse “memories”, Inv. Leiter’s abusive interviewing practices and other essential information.

Further, in a non-corrupt legal system, when the court refused to give the local science-uninformed defense attorneys time to review the evidence nor obtain competent experts and thus have a chance of understanding what happened in this multi-year complex investigation -- *both defense counsel should have resigned from the case and refused to participate in a sham trial rather than simply comply with Judge Cleland’s “likely-conviction-death-march” trial schedule reportedly generated at the secret “off the record” motel meeting*. Attorney Amendola knew or should have known this, “impossibly rapid” trial schedule would surely doom his client’s case.

On this record, *alleged criminal co-conspirators Fina-Cleland-Amendola did not tell anyone about the existence of the “corrupt secret off-the-record Motel meeting” until 2016 – 4 years after the trial and conviction of the Defendant.*

On this record, the alleged criminal co-conspirators – Cleland, Fina, and Amendola -- even hid the “corrupt secret meeting” from defense co-counsel Rominger. (See testimony of Rominger at the August 2016 post-conviction hearing).

On this record, the December 12, 2011 unprecedented, corrupt, secret Motel “off the record”, no court reporter, hidden from defense co-counsel for 4 years, hidden from the public for 4 years, *meeting* remained hidden until MAY of 2016: Defendant’s Appellate Attorneys reported first learning of the “corrupt secret meeting on May 2, 2016. (See, Motion for Recusal of Judge Cleland, filed on May 9, 2016.)

*As stated in the Motion for Recusal, on May 2, 2016 after the scheduled argument in the underlying PCRA matter, the PCRA hearing Judge Cleland placed on the record that HE could be a fact witness with respect to one of the Defendants claims. Specifically, Judge Cleland represented, on the record, that HE was present with trial counsel Joe Amendola, counsel for the Commonwealth and District Magistrate Scott at the Hilton Garden Inn in State College before the scheduled preliminary hearing at a reportedly “unrecorded, “off-the-record”, undisclosed for 4 YEARS, “secret” meeting.*

At this off-record, no court reporter, not disclosed to defense co-counsel, meeting at the Hilton Garden Inn, certain representations appear to have been made by both the Commonwealth and Mr. Amendola and an unrecorded agreement was reached regarding the mysterious waiver of Mr. Sandusky’s essential preliminary hearing plus creating an impossibly rapid “likely conviction, ultra-fast, impossibly rapid” trial schedule – with the entire discussion *“off the record”*.

The Essential Alternative Investigative Hypothesis here is that a criminal co-Improper agreement was reached for Amendola to work with Fina and Cleland to actively *sabotage the defendant’s case (much like the infamous PA Kids for Cash corruption scheme only far more simple)* to ensure a rapid, sure conviction thus saving the local economy from hundreds of millions of dollars in losses by preventing an NCAA “death penalty” for the PSU football program – and also facilitating the political goals of Gov Corbett, reportedly a mentor-ally of Cleland, Fina, and Kelley.

*More evidence the corrupt-appearing, secret Motel meeting was actually an improper agreement:* Defense Attorney (1 of 2) Carl Rominger, JD testified in the PCRA proceedings of August 12, 2016 that even *he, defense co-counsel Rominger, was reportedly NOT informed about the Cleland-Fina-Amendola secret Motel “off the record” meeting* until he was told by appellate defense counsel Lindsay, *the night before Rominger’s testimony at the hearing on August 11, 2016*. This appears to be powerful evidence that the alleged criminal co-conspirators, Cleland, Fina, Amendola were actively and successfully *hiding knowledge of the unprecedented, secret, unrecorded, meeting at the Hilton Garden Inn for years.*

#### **6C17. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

*More evidence supporting the Investigative Hypothesis that the corrupt-appearing, secret Hilton Garden Motel meeting did indeed produce an improper agreement:*

To the best of my knowledge, no judge in any other state has ever held such a *secret Motel “off the record”, with no court reporter, even hidden from defense co-counsel, also hidden from the public, meeting at a local motel to waive defendant’s essential right to a preliminary hearing and set up a “likely conviction, impossibly rapid” trial schedule.* An ethical attorney would NEVER have attended such a meeting much less kept it secret from his own defense co-counsel for Four Years.

**Key Inv. Hyp. Notes:** In addition, on this record, an ethical, clean defense attorney **would not have stayed in the case** if they “lacked time to even review basic evidence” or had “no time to retain and hire essential expert witnesses) as Amendola reportedly claimed in his “covering-up corruption” motions for additional time and to withdraw (both of which he apparently pre-arranged with Cleland to lose) and his subsequent affidavits for appellate counsel. **Given the lack of time, no experts, Amendola and Rominger had no ethical path but to RESIGN from the case and walk away** – but they stayed and participated in what appears to have been a historically uninformed and/or misinformed trial. On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

#### **6C18. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

On this record, the dysfunction, misconduct, ignorance of basic-essential science-history, well-documented corruption, and Negligence displayed in the PA v Sandusky investigation and trial are all unprecedented in my 30+ years of experience in dozens of states reviewing hundreds of cases. Why did such a disastrous investigation and trial take place?

Investigative Hypotheses Questions: Why were fundamental standards violated including:

-- Where were *ALL interviews NOT properly recorded? An essential Memory-False Memory-expert witness was NOT provided to inform jury.* On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

-- *A essential FRYE-DAUBERT motion and hearing required in such cases to protect the integrity of the legal system was NOT sought and NOT conducted , and secret “off the record” hearings held in a local Motel and not disclosed for YEARS -- to set a “likely-conviction-death-march” trial schedule -- are NEVER, EVER permitted?*

Why were key issues like the obvious memory contaminative effects of exposure to science-uninformed local therapists Gillum and Macnab (both clearly uninformed proponents of the debunked RRM-MPD-DISS ideology) not properly raised and explained to the jury by expert witnesses at trial? Why was the history of lawsuits and licensing revocations for RRM-MPD-DISS therapists like Gillum and Macnab? Why were the apparent licensing violations and other misconduct by local therapists Gillum and Macnab not fully exposed at trial (e.g., more evidence should have been gathered but on this record which includes Gillum's book plus public statements by both as well as the "sting investigation" by AJ Dillon plus other evidence, the local science-uninformed therapists Gillum and Macnab committed serious licensing-ethics informed consent violations, as well as unethical dual conflicting role violations, as well as applying-teaching-indoctrinating vulnerable patients in the "pernicious myth" of RRM-MPD-DISS ideology and other ethics-licensing violations NONE of which were raised at trial, nor explained to the jury by an expert in Memory-False Memory-Memory Contamination, etc).

**6C19. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

Not Properly Dealing with Probable Memory Contamination Effects of Science Uninformed Psychotherapist Interviews: Negligently and/or Improperly Ignoring the Controversial, Malpractice of Recovered Repressed Memory Psychotherapists Gillum, Macnab, and Chambers. –

All attorneys (both sides) also negligently or improperly failed to note and properly deal with and respond to the documented known-to-be often memory contaminating procedures and unethical methods of at least two (and potentially more) apparently poorly trained, science-uninformed psychotherapists Gillum and MacNab, — both of whom appear to have treated alleged victims and both of whom apparently gullibly believe that "recovering repressed (blocked, buried) memories via psychotherapy, via rumination, via interviews with civil attorneys, in "group RRM therapy", *or other methods*) can **reliably** "bring back" or "reconstruct" or "free up" or "open the door" to "newly reported" trauma memories that are somehow magically accurate representations of real events—a pernicious myth.

In multiple, previous litigation cases RRM therapists lost malpractice lawsuits and several were prosecuted by State Licensing Boards and lost their license.

There is no evidence in this record that these local therapists were aware of the science debunking RRM-MPD-DISS ideology. There is no evidence in this record that these local therapists were aware of such ideas being very controversial. *Failure to obtain informed consent from their patients – including informing them of the well-documented controversies of debunking of RRM-MPD-DISS would be unethical misconduct and subject them to potential license revocation.* None of this essential information

and analysis was apparently told to the jury. On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

**6C20. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

**Not Properly Dealing With Probable Memory Contamination Effects of Science**

**Uninformed Attorney Interviews :** Negligently and/or Improperly Ignoring Potentially Memory Contaminating (Unrecorded) “Interviews with Civil Attorneys Shubin and Andreozzi : All attorneys (both sides) also negligently or improperly failed to note and properly deal with and respond to — the memory contaminative interview process of several civil attorneys who — like the investigators — appear to have worked to synch with investigators and therapists to manipulate, coerce, and change the memories of their clients to maximize financial recoveries. (See, Newly Discovered Evidence of SS-Shubin interview and the Sting Investigation results of AJ Dillon)

Inv. Hyp Note: It is important to consider that in the recorded discussion of Inv Leiter of April 21, 2011 – *Leiter was apparently TRAINING Attorney Andreozzi (who was improperly present at the interview) HOW to conduct memory manipulative, Confirmation Bias, improper interviews just like Leiter's improper interviews.* In sum, on this record Leiter was apparently *helping attorney Andreozzi to SUE the STATE for millions of dollars* thus providing more damage/disrepute for PSU. Was this odd result actually predictable as a key political goal of Corbett-Kelley-Fina?

**6C21. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

MUCH ESSENTIAL EVIDENCE WAS NEGLIGENTLY OR IMPROPERLY WITHHELD FROM THE JURY IN THIS CASE:

A leading world expert on memory contamination and trauma memories Prof E. Loftus of the Univ of California wrote a book about the relevant research entitled **THE MYTH OF REPRESSED MEMORY but the jury in the Sandusky trial was never informed of this essential evidence.**<sup>7</sup>

The leading world trauma expert, Prof Richard McNally, Director of the Harvard Univ Clinical Psychology program, wrote a book about the relevant science entitled **REMEMBERING TRAUMA**, Harvard Press. (not “repressing trauma” and not recovering memories of trauma and not when memories start to come back about trauma) but the jury in the Sandusky trial was never informed of this essential evidence.

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<sup>7</sup> Reportedly, Dr Loftus participated in a *post*-conviction hearing but apparently was only given a very slender, limited file of records to review in this case].

The leading expert on cult influence, coercive influence, and indoctrination Prof Richard Ofshe of UC Berkeley wrote a book on RRM cult indoctrination called **MAKING MONSTERS** (i.e., how RRM ideology and practices took people with no history of trauma and produced new “memories” that turned their parents into abusive monsters – with NO corroborating evidence and with the FBI investigating and debunking thousands of these cases – just like in Pennsylvania v Sandusky) but the jury in the Sandusky trial was never informed of this essential evidence.

World experts in the history of methodological errors of RRM-MPD-DISS ideology -- Profs Harrison Pope and James Hudson of Harvard Medical School -- wrote an exhaustive review of research on thousands of victims of trauma showing NONE blocked out and later reliably recovered memories – ***because humans remember horrific trauma in searing detail and DO NOT BLOCK out such memories*** -- but the jury in the Sandusky trial was never informed of this essential evidence.

An entire ***medical textbook*** was published on the RRM debacle and how lawsuits and licensing revocations cleaned MOST of this destructive ideology out of courts and hospitals but pockets remain. See, Pendergrast, M., (2017) *The Repressed Memory Epidemic: How It Happened and What We Need to Learn from It*, [Springer International Publishing](#), ISBN 9783319633749 -- but the jury in the Sandusky trial was never informed of this essential evidence.

In the ***International book on Sex Cases from Oxford University Press*** the Oxford Press Editors invited me as an international expert in RRM-MPD-DISS ideology and the related history and legal-science issues to provide a chapter explaining the history of science of debunking and exposing as inherently unreliable (and based on junk science methods/theories) recovered repressed memories like the ones presented to the jury in Pennsylvania v Sandusky. See, Barden, R.C., *Memory and Reliability: Developments and Controversial Issues*. In *Witness Testimony in Sex Cases*, Eds. Pamela Radcliffe, Anthony-Heaton Armstrong, Gisli Gudjonsson, and David Wolchover, Consultant Editor: Sir Anthony Hooper, Oxford University Press, March 2016 -- ***but the jury in the Sandusky trial was never informed of ANY this essential, published, widely discussed evidence. ...***

On this record, the jury in PA vs Sandusky was uninformed and/or misinformed with regard to essential scientific-history-memory-interviewing and related issues.

**6C22. Investigative Hypotheses: Defense Counsel Failed to Retain, Prepare, and Have Testify an EXPERT WITNESS to PROPERLY EXPLAIN TO THE JURY THAT “Fervently-Believed-In-But-False-“Memories” are often not lies :** A very essential issue for juries to hear and understand in such cases. Juries often believed (mistakenly) that human memory is like Recording or DVD and can be “played back”. Such jurors are often torn between the “truth or lie” issues – helping them understand that Fervently-Believed-In-But-False-“Memories” are not lies permits jurors to consider

this essential alternative hypothesis in such cases. It is often one of the most powerful pieces of evidence in a case where alleged “memories” with no corroborative evidence are all the jury can consider.

**6C24. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

NO OPINIONS ON MOTIVATION ONLY INVESTIGATIVE HYPOTHESES: Alternative Hypotheses for future potential Investigations into the troubled Pa v Sandusky case.

As a SCIENCE Expert Witness, I, like everyone else, am *not a reliable human lie detector* and thus cannot offer any opinions as to the motivations of anyone engaged in *Errors? and/or Negligence? and/or Corruption?... in this case.*

in this case. To avoid Confirmation Bias and *protect the integrity of the legal system*, I have generated and offered in this report several Alternative Investigative Hypotheses that Federal Anti-Corruption or PA Legislative Committee Investigators could pursue.

**6C25. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

MISCONDUCT THEORY ONE = Did looming Economic Damages taint this case? Was this the motivation for the lawyers and judge joining forces to produce a sabotaged, rapid, and sure conviction?

Did a looming ECONOMIC disaster influence the legal process in this case? How much of this case was driven by corrupt manipulation of the legal system to avoid the threatened and expected NCAA death penalty and the resulting \$500 million in economic damages to the local community and PSU?

**6C25. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

MISCONDUCT THEORY TWO = Did the misconduct of Local Civil Attorneys and Therapists taint this case? Were local civil lawyers and therapists contaminating-manipulating vulnerable clients-patients “memories” for millions of dollars in easy payoffs?

How much of this case was driven by corrupt manipulation of the legal system and the minds of troubled young men to obtain payoffs of millions of dollars? Were Attorney SHUBIN-Therapist MACNAB in business together to acquire huge payouts for unvetted, uninvestigated brand-new, “memories” that were formerly “blocked, buried, or dissociated”? How much of this case was driven by local civil **LAWYERS and PSYCHOTHERAPISTS** involved in the process of “finding new memories of abuse” with reportedly no competent vetting, no competent investigations, and no corroborative evidence

*required. Is it true that OVER \$100 MILLION has been paid thus far for “memories of abuse” with no corroboration, no competent vetting, and no competent investigation?*

-- How many alleged victims “memories” were manipulated thus producing “new memories” following unrecorded interviews/therapy by negligent therapists Gillum and Macnab or by Civil Attorneys Shubin and Andreozzi,?

-- plus the unprecedented, corrupt, “confessed” PA AG systemic Government campaign of memory manipulation (See, Inv Leiter’s confession of April 21, 2011 as analyzed in this report),

-- plus the use of local RRM-MPD-DISSOCIATION “true believers” to do “interviews-therapy” with multiple alleged victims resulting in “new memories” of abuse worth millions of dollars to low-income, troubled young men represented by civil attorneys (e.g. Andrew Shubin, JD and Benjamin Andreozzi, JD who reportedly repeatedly “interviewed” witnesses

-- plus the investigative issue of whether Attorneys like Andrew Shubin, JD and Benjamin Andreozzi, JD in multiple unrecorded “interviews” may have offered the low-income, troubled young men MILLIONS of dollars in exchange for “new memories” of abuse? No more factory work with multi-millions in PSU payout dollars the alleged – very wealthy – victims could buy a nice house, a nice car, buy beer, smoke weed, and play video games for life. Is this what happened? Could the vetting system be improved?

--plus the alleged victims reportedly the novel, very controversial, the “pernicious myth”, inherently unreliable, debunked in multiple Frye-Daubert hearings, RRM-MPD-DISSOCIATION “victim” ideology notions including reporting new “memories” of abuse at age 2, gaining new memories by having conversations with an “inner child” personality, and/or finding new memories that had allegedly been “blocked”, “buried” or “dissociated” etc (see detailed analysis of repressed memory statements by witnesses in this report).

-- plus why were lawyers Shubin and Andreozzi reportedly permitted to attend police interviews with their civil litigation clients, in the same room (!) ... something I’ve not seen in any other state over the last 30 years. The memory contamination concerns are obvious.

.. how much of all this process was due to simple greed amid virtually assured payments of millions of dollars in exchange for a few, new, unverified, unvetted, non-corroborated, changed-over-time alleged “memories” of abuse?

#### **6C26. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

MISCONDUCT THEORY THREE = Political Forces. How much of this case was the result of a corrupt manipulation of the prosecutorial system to smear and remove two of Gov Corbett’s most

powerful and persuasive opponents, Pres. Spanier and Coach Paterno, in Corbett's desperate and unpopular political campaign to reduce the PSU budget by over 50% (thus destroying the school? ).

Investigative Hypotheses and Questions: *On this record, PA GOV Corbet was AG then he became GOV. He then appointed one of his close associates Linda Kelly to serve as acting Pennsylvania Attorney General. Kelly reportedly proceeded to “go after “ Gov Corbet’s main political obstacles to his legislative priority of reducing the PSU budget by 50% (FIFTY percent).*

PSU President G. Spanier – a FAR more educated and NATIONALLY successful public official than PA Gov Corbett could ever hope to be -- was reportedly, a key obstacle to Gov Corbet's most essential legislative-political agenda issue. The other obstacle was renowned football Coach Joe Paterno, one of the most famous and revered coaches in the history of college sports. These two powerful, persuasive defenders of PSU posed very real political dangers to Gov Corbett – did he act through proxies like Kelley and Fina to take them out?

Federal Investigator J. SNEDDEN – the best trained and most competent investigator in this case by far -- spent months on a very detailed investigation of Spanier's Federal Military-Intelligence Secrecy Clearance and Snedden's report noted that Spanier was a very highly regarded person not just in PA but nationally in the US-Military and Law Enforcement and Intelligence Communities. Snedden's report found Spanier not guilty of any misconduct but was in contrast very highly thought of at PSU, nationally, at the DOD, at the DOJ, at the CIA, etc etc.

Thus on this record, PSU Pres. Spanier was thoroughly investigated by experienced Federal Investigator Snedden and fully cleared of any wrongdoing. On this record Inv. See, Snedden Federal Investigation of PSU President Spanier's Federal Security Clearance, finding Spanier did nothing wrong. Snedden also found the changing, morphing story of a “shower attack” from highly controversial witness Mike McQueary ( the story used to “take out” Spanier and Paterno ) “made no sense”.

Federal Investigator Snedden noted that McQueary's father, Dr Drunov, and Joe Paterno had *unanimously contradicted McQueary's sA5tory*. In addition, Snedden found it “made no sense” that a 6ft 5in 250+ pound agile athlete like McQueary would not have acted immediately to save a child being horrifically attacked just a few feet away. In contrast, to Snedden, Corbett's ally-protege Kelley and “proven-to-be-a-improper” prosecutor FINA attacked Spanier and Paterno.

See, <https://www.mccall.com/news/mc-xpm-2012-11-01-mc-penn-state-president-graham-spanier-sandusky-20121101-story.html>.

See, **Ex-Penn State president charged in Jerry Sandusky case.** By John L. Micek and Peter Hall and Of the Morning Call ... HARRISBURG —

When it really counted, three top administrators at Penn State University engaged in a "conspiracy of silence" to cover up child sex-abuse allegations against retired assistant football coach

Jerry Sandusky. *Those were the words Pennsylvania Attorney General Linda Kelly (Corbett's protege and ally) used Thursday* as she made the announcement Nittany Nation had been expecting for months: that former Penn State President Graham Spanier has been charged in the Sandusky scandal. "This was not a mistake. This was not an oversight. This was not misjudgment," Kelly said during a news conference at the state Capitol. "This was a conspiracy of silence." ... **In a statement, Spanier's attorneys dismissed the charges as a "farce" and accused Gov. Tom Corbett, who initiated the Sandusky probe while serving as attorney general from 2004 to 2010...** *"These charges are the work of a vindictive and politically motivated governor working through an un-elected attorney general (Corbett's close ally who he appointed) Linda Kelly, whom he appointed to do his bidding* and who will be a lame duck five days from now," the statement jointly attributed to lawyers Timothy K. Harris, Elizabeth Ainslie and Peter F. Vaira reads.

Under questioning from reporters, *Kelly, a former federal prosecutor who worked for Corbett when he was U.S. attorney for the Western District,* defended the investigation.

See, <https://www.mccall.com/news/mc-xpm-2012-11-01-mc-penn-state-president-graham-spanier-sandusky-20121101-story.html>

**Also see March 9, 2011 – Fierce POLITICAL battle between Gov Corbett and PSU Pres. Spanier. Corbett seeking a 50% reduction in PSU budget.** "Yesterday morning, many in the Penn State community tuned in to PCN to watch Governor Tom Corbett announce his budget proposal, one chockfull of budget cuts. According to the Patriot News, nearly \$850 million was cut from this year's budget by "eliminating funding for 103 budget lines, reducing funding for more than 150 appropriations and consolidating 55 others." *Corbett's plan included a massive and unprecedented cut to Penn State's appropriations— an overall reduction of at least \$182 million, not including various other cuts hidden in the many pages of the budget, cuts associated with Penn State's massive array of extension programs.* The cut reduces Penn State's appropriation by more than 50%, down from about \$330 million this year. Penn State officials had been anticipating budget cuts—the poor financial standing of our state's government is no secret—but according to President Graham Spanier, the university had not imagined that things would be this bad. See, <https://onwardstate.com/2011/03/09/gov-corbett-proposes-huge-budget-cuts-for-penn-state/>

**March 2011 – PA Governor Tom Corbett proposed a 52.4% cut in Penn State Univ. funding.** Pres. Spanier pushed back against the proposed cut and gave a speech warning such a cut would be "devastating" to PSU. The GOV "got into fighting mode" "starting forcefully attacking PSU".... GOV Corbett is a Lebanon Valley College graduate (private college) and a strong supporter of the voucher system, where individuals can choose to utilize funding toward private education as opposed to public

education and is thus not fond of PSU and is not fond of public higher education. “ (See, Snedden Federal Investigation report at pg 24).

**Investigative Hypotheses and Questions:** NOTE the Fierce political Battle over the future of public university funding in PA. The battle of Spanier and Paterno vs Gov Corbett. ... “During State Budget hearings, other University Presidents would **defer to Spanier to make the presentation for public funding.** Gov. Corbett proposed unprecedeted major budget cuts to Public Education (50% cut for PSU). When Gov Corbett proposed these major budget cuts to public education, **Spanier was the natural leader to lead the fight** (against Corbett). Spanier’s impression was that as someone who was very confident, persuasive, well-known and strongly opposing Gov Corbett’s position (his main Legislative goal?), this must have greatly irritated Gov. Corbett. “ See, e.g. **Snedden Federal Investigation report at pg 89.**

**Investigative Hypotheses and Questions:** Federal Agent Snedden’s investigation showed Pres Spaner to be BY FAR the most competent and Nationally Successful person in the PA v Sandusky case story – along with Joe Paterno. See, **Snedden Federal Investigation** -- Interview report ... “Spanier is very committed to making life better for people and was a great representative of Penn State. ... Spanier was the most knowledgeable University President in the USA regarding collegiate athletics.” See, Snedden Federal Investigation report at pg 92.

See, Snedden Federal investigation re: Pres Spanier’s US DOD, CIA, FBI consulting and U.S. Security Clearance history.

- former PSU President, G. Spanier Board Memberships -- Graham Spanier, former President of PSU, has served as a **board member** for the following national boards of directors/trustees:
  - Association of American Universities, where he **served as chair**, 2007–08
  - Association of State Universities and Land-Grant Colleges, where **he served as chair**, 2001–02
  - Big Ten Conference Council of Presidents/Chancellors, where he served as chair
  - National Collegiate Athletic Association Division I, where **he served as chair** and was a member of the Association’s executive committee, 1997–2001
  - Kellogg Commission on the Future of State and Land-Grant Universities for the Association of Public and Land-grant Universities, where **he served as chair**, 1996–2000
  - University Corporation for Advanced Internet Development (Internet2), where he was a founding member, 1997–2000
  - Child Fund International (formerly Christian Children’s Fund), 1985–94; **chair**, 1992–94
  - Worldwide Universities Network, where he served as a **founding member and vice-chair**, 2000–07
  - National Council on Family Relations, where he served as president from 1987 to 1988
  - Universities Research Association, 2001–05
  - Business Higher Education Forum, 2005–11
  - Council on Competitiveness, 1998–2011
  - United States Department of Education Commission on Opportunity in Athletics], 2002–03

- U.S. Presidential Policy Advisory Board on Information Technology, **served as chair**, 1997–99
- Joint Commission on Accountability Reporting in Higher Education, 1994–97
- Association of Academic Health Centers Council on Health Sciences and the university, where he **served as co-chair**, 1996–99
- Joint Committee on Higher Education and the Entertainment Communities, where he **served as co-chair**, 2002–06
- National Security Higher Education Advisory Board, where he served as chair, 2005–11
- United States Steel Corporation, where he served as independent director and was a member of both the Audit Committee and the Corporate Governance & Public Policy Committee, 2008–11
- Citizens Financial Group, where he served as director, 2002–11
- Junior Achievement Worldwide, where he served on the Board of Governors, 2003–2011
- FM Global Insurance Company, where he served as director, 2010–12
- Bowl Championship Series, where he served as chair of the Presidential Oversight Committee
- In addition, Spanier served on the board of advisers for the U.S. President at the Naval Postgraduate School and Naval War College.
- Spanier served as **Chair** of the Association of American Universities and **Chair** of the Association of Land Grant Universities and on the **Board** of the World Universities.
- Spanier was obviously FAR more credible, educated, and nationally successful than Gov Corbett – is that why Kelley and Fina targeted Spanier? (See, Snedden Federal Investigation report)
  - Also, Spanier was very involved nationally with ...
  - National Counterintelligence Working Group, 2005–11
  - Advisor to the U.S. Department of Defense, (DOD)
  - Advisor to the Central Intelligence Agency (CIA),
  - Advisor to the Federal Bureau of Investigation (FBI) See, Snedden Federal Investigation.

**November 10, 2011 – Following the (pre-planned?) media firestorm** Graham B. Spanier resigned (negotiated as “without cause” thus not terminated) as President of Pennsylvania State University AND retained at that time his full faculty status as University Professor, and Professor of Human Development and Family Studies, Sociology, Demography, and Family and Community Medicine. (See, Snedden Investigation Report at pg. 24). d Dr. Spanier retained his U.S. Military Intelligence security clearance at that time following the detailed investigation report by Federal Investigator Snedden which cleared Spanier of any wrongdoing. (See, Snedden Investigation Report at pg. 4).

**Note:** “*Spanier feels that his departure was retribution by Gov Corbet for his speaking out against Corbett’s proposed PSU budget cuts.* (See, Snedden Investigation Report).

Snedden found that “Spanier had no knowledge of any circumstances involving Sandusky beyond the one meeting with Curly and Schultz who reported **McQueary’s vague “concerns” that McQueary**

**did NOT report to police** ... Spanier attributed his departure as President of Penn State to a “Media Frenzy” and a “Rush To Judgment”. Spanier had no contact with Mike McQueary. Spanier served as Chair of the Association of American Universities and Chair of the Association of Land Grant Universities and on the Board of the World Universities. (See, Snedden Federal Investigation Report at pg. 25-27).

Spanier was also on the Board of U.S. Naval Post Graduate School, Advisor to the U.S. Department of Defense, (DOD) Advisor to the Central Intelligence Agency (CIA), Advisor to the Federal Bureau of Investigation (FBI) – ***Subject had a great reputation with those agencies.*** The circumstances surrounding Spanier’s departure from the PSU Presidency does not adversely impact his judgement, reliability, or ability to safeguard national security information. ***Spanier has a very high reputation and very high character, has very high moral character, is very responsible and takes on hard issues.... Spanier holds positions on various boards specifically the Board of US Steel, The Big Ten, The NCAA, the Association of Undergraduate Universities, etc.*** (See, Snedden Federal Investigation Report at pg. 40-43).

See, Snedden Federal Investigation Report at pg 75. “Spanier’s reputation as President was very high. ***Spanier holds a very high standing, was a well acknowledged leader, one of the top guys in this field. Spanier’s character and stature are very high.*** Spanier is responsible, reliable, friendly, gets along well with others and is enthusiastic.” [ NOTE: Compare Snedden’s character judgment regarding Spanier to the “character” of the reprimanded, disbarred, sentenced, fired, “secret meeting attending”, recused, “porno addict”, apparently sabotaged trial performance, attorneys and judges involved in PA vs Sandusky.]

**Snedden Federal Investigation at pg 86 and 87... eg.** Spanier said Curley identified the source of the “concerned” Graduate Assistant to be Mike McQueary. (“NO rape was ever reported only “horseplay” and “wrestling” and McQueary was only expressing “concerns”.

***Joe Paterno, Dr Drunov, Curley, Shultz, and McQueary’s father reportedly all agreed that M. McQueary told them nothing about criminal abuse in the shower – only vague “concerns” and “horseplay”.. Upon detailed questioning from mandated reporter Dr Drunov, McQueary stated he saw NO crime of abuse. Apparently, No crime of abuse was reported to police by Mr. McQueary.*** This information is consistent with the investigative hypothesis that the attack on Spanier and Paterno was a political smear with no factual basis. Is this yet another Indicia of Corruption in the PA Legal System? Will these questions be properly investigated in public Legislative and/or Federal hearings?

**6C27. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

*Investigative Hypotheses and Questions: Was there a Secretly Collusive Investigation with FINA and FREEH and the NCAA?*

Freeh Group Investigator Ms McChesney's Secret Diary reportedly showed unethical, corrupt collusion in the supposedly "independent" investigation of the Freeh Group working with the "since proven to be an improper - license suspended - lawyer" Fina of the AG's Office. (See filed Motions with Exhibits).

*Reportedly:*

The Penn State BD of Trustees Special Investigative Task Force engaged the Freeh Law Firm (FLF) to "perform an *independent, full and complete investigation* of the recently publicized allegations of sexual abuse... and the alleged failure "to report such sexual abuse to appropriate police and government authorities" ...

The Freeh investigative team co-leader *Kathleen McChesney reportedly created a SECRET DAILY DIARY* that summarized daily briefings — including contacts with the Office of Attorney General and Frank Fina.

On Nov 4, 2019 Defense appellate lawyer Mr Lindsay reportedly received a copy of Ms McChesney's "secret" diary. Later, Defense Appellate attorney Lindsay reportedly received copies of "summaries of emails" from and to Freeh Group team members investigating this case as well as Defense Trial Lawyer documents and an Affidavit from Defense Attorney Amendola. The "secret diary" appears to *document substantial, secret, and collusive communications and sharing of information* between the AG's Office and the Freeh team in direct contradiction to the public claims of an "independent investigation". *These communications apparently included "information, even testimony, from the special investigating grand jury then in session* (was this a *criminal* violation of Grand Jury secrecy rules? )".

In sum, on this record, evidence (e.g. Freeh investigator McChesney's personal daily diary) indicates there was *never any independent investigation by the AG or Freeh Group as they were intensively and secretly sharing information throughout this process. In sum, claims of "independent investigations" appear to have been manipulative, deceitful, and false and issued to cover a corrupt, deceitful process to "control the narrative"*.

*Note the conclusions of other reports regarding the Freeh Group report:*

-- "Louis Freeh produced a report with conclusions that were not supported by his own investigation, contrary to the terms of his engagement with University, in order to promote his own business interests" See, 2018 - PSU BD of Trustees Report on the Freeh Report Flawed Methodology

-- Penn State's Board scapegoated some of the University's most loyal, honorable, and longstanding servants in a misguided attempt to quickly put the cisis behind them. See, 2018 - PSU BD of Trustees Report on the Freeh Report Flawed Methodology

-- Governor Corbett slashed the University's funding and *then actively influenced the handling of the Sandusky crisis in ways that harmed the Commonwealth's land grant University*, an institution he was obligated to support both as Governor and as a Trustee. See, 2018 - PSU BD of Trustees Report on the Freeh Report Flawed Methodology

As a result of our full, fair, and thorough review of the Freeh investigation source materials, we repudiate the conclusions of the Freeh Report. See, 2018 - PSU BD of Trustees Report on the Freeh Report Flawed Methodology, See also, Thornburgh, "Review of the Freeh Concerning Joseph Paterno,", February 6, 2013., See also,lawsuit of Corman and McCord vs. NCAA and PSU, December 15, 2014., See, Van Natta, "Court Documents indicate NCAA and Freeh Investigators worked together on Penn State Nittany Lions investigation. ESPN, November 12, 2014, Senator Corman Sues NCAA to Keep Penn State Fine Money in PA, Centre Daily Times, January 5, 2013, Home, K. "New Emails Show NCAA Helped Freeh In Investigation. Onward State, Nov 12, 2014. ; How Penn State Turned a Crisis Into A Disaster: An Interview with Crisis Management Pioneer Steven Fink." Harvard Business Review, Sept 15, 2014. ; Thompson, C. Penn State Alumni Trustees Win Battle to Review Freeh Report Files, PennLive.com, November, 19, 2015. ; See, Freeh Group Diary, ; See Freeh, McNeill, McChesney June 25, 2012, and Email exchanges, and other evicence.

#### **6C28. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption?***

Investigative Hypotheses and Questions: Indicia of Misconduct and/or Negligence in the FREEH GROUP investigation – Secret collusion with the PA AG (Fina)?

Was the AG/FREEH Investigation actually secretly and fraudulently Collusive and not Independent as was reportedly claimed by Freeh Group, the OAG, and the NCAA? Were the massive errors and omissions in the FREEH GROUP report deliberate machinations to facilitate the AG-Corbett narrative?

***Why did the attorneys and judges in this case (including all attorneys on all sides) negligently or improperly fail to notice and properly deal with and respond to***

—the obvious and serious FRYE issues in this case with regard to the inherent unreliability of therapy-interview-tainted, “buried”, “blocked”, “repressed”, “recovered”, “dissociated” and other types of abnormal and controversial RRM-MPD-DISS “memories” thus contaminating the integrity of the PA legal system

-- no competent expert witness testimony on Memory-False Memory-Interviewing Methods to explain the relevant science and history to the misled, uninformed, and/or misinformed jury.

-- Inv. Leiter's historic discussion of an infamous Memory Manipulative interviewing scheme

-- and other obvious, serious flaws in the investigation and trial of this matter as detailed in this report. Why did the "experts" at Freeh Group not notice (or deliberately hide) all of these errors? For \$8 million, one might expect the Freeh Group to have noticed and reported on at least a few of the historic evidence of Negligence or corruption in this troubled case.

Many other reports have found faults in the Freeh report one concluding *the Freeh Report was a failure that does not meet the basic requirements of a thorough, objective and fair investigation.*<sup>8</sup>

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<sup>8</sup> "Former U.S. Attorney General and former PA Governor Dick Thornburgh concluded in a February 10, 2013 report, "A RUSH TO INJUSTICE THE FAILURE OF THE FREEH REPORT, that the Freeh investigative methodology was flawed, the factual findings limited and incomplete, and its observations about Joe Paterno unreliable and unfounded." And... "The lack of factual support for the Freeh Group's Special Investigative Council's inaccurate and unsound findings related to Mr. Paterno and its numerous process-oriented deficiencies was a rush to injustice and calls into question the credibility of the entire Report." ... He concluded that the "The Freeh Report is factually wrong, speculative and "fundamentally flawed." Other experts on the report included: top FBI profiler Jim Clemente, prominent Washington attorney Wick Sollers and the director of The Johns Hopkins Sexual Behaviors Consultation Unit, Dr. Fred Berlin. They Concluded that , conclude that *the Freeh Report was a failure that does not meet the basic requirements of a thorough, objective and fair investigation.*

Among other findings, the experts determined that the conclusions of the Freeh Report are based on raw speculation and unsupported opinion—not facts and evidence. "*The Freeh report is a profound failure,*" Sollers said. "*It isn't a little wrong on the minor issues. It is totally wrong on the most critical issues.* That the board and the NCAA relied on this report, without appropriate review or analysis, is a miscarriage of justice."

"Former attorney general Dick Thornburgh noted *Freeh's failure to conduct interviews with most of the key witnesses is a glaring deficiency.* ... Freeh investigators did not have subpoena power, and no one testified under oath. Worse, witnesses were allowed to speak anonymously, something that would never happen in a legitimate legal proceeding.

The conspiracy claim made by the Frdeeh report based on *a string of three (out of 100,000) emails* falls apart under scrutiny. Because of a an email system technology change in 2004, *most of the Penn State emails for the time in question are not accessible*. Moreover, there are no emails authored by Joe Paterno and none that he received. ... On August 22, 2012, Tim Lewis, a former federal appeals court judge issued *a strong condemnation of the Freeh Report* at a press conference in Philadelphia. Lewis's scathing attack on the Freeh Report stimulated some reporters, bloggers, and analysts to dig deeper into Freeh's report and question its truth.

Groups such as Penn Staters for Responsible Stewardship deconstructed the Freeh Report, exposing serious flaws. Other reviews include Ray Blehar, a former U.S. intelligence analyst, Eileen Morgan, a U.S. government technology analyst, and others. ... Freeh's negligent and defective report simply assumes without credible evidence that McQueary explicitly reported a sexual act to coach Paterno; It then assumes without credible evidence that either Paterno or McQueary reported a sexual act to either Curley, Schultz or both; It next assumes without credible evidence that either Curley or Schultz reported a sexual assault to Dr. Spanier. Curley and Schultz have denied that they ever told Dr. Spanier anything of the sort. Dr. Jonathan Dranov, a close friend to the McQueary family who heard McQueary's first-hand account of what happened just hours after the incident occurred, and who testified at Sandusky's trial, has consistently stated that he asked McQueary if he had witnessed any sexual contact or abuse. McQueary replied, unequivocally, "no." Moreover, the law requires any physician who receives information about the sexual abuse of a child to report it immediately. Nothing McQueary told Dr. Dranov suggested to the doctor a need to do so".... "A 2002 article in Salon summed up how some observers have criticized Freeh's time as Director of the FBI: "It's no secret the FBI suffered a series of embarrassments during Freeh's tenure, some of them deadly. They include the botched handling of the investigations into Waco and Ruby Ridge; the bombing at the Atlanta Olympic Village and the heavy-handed tactics used against Richard Jewell; the breakdown of the FBI crime labs; the inept pursuit of suspected atomic spy Wen Ho Lee; the belated discovery of turncoat agent Richard Hanssen; and

**6C29. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: Errors, and/or Negligence and/or Corruption?**

**Investigative Hypotheses and Questions:** Indicia of Negligence and/or Misconduct in the FREEH GROUP investigation? Was grossly improper interview methodology permitted as reported by multiple interviewees at PSU?

Evidence of improper leading-suggestive, abusive and potentially fraudulent, improperly-improperly unrecorded interviews by Freeh Group investigators as reported by PSU faculty witnesses. Note when investigative interviews are NOT properly recorded it becomes impossible for investigators to convincingly rebut allegations that improper-coercive-threatening-repetitive-memory contaminative practices were used or statements of witnesses were improperly mis-reported.

See, evidence in The Report to the Board of Trustees of the Pennsylvania Univ" submitted June 29, 2018). "Multiple individuals... told us they were "subjected to coercive tactics when interviewed by Freeh investigators...." Interviewers shouted, were insulting, and demanded specific information (e.g. tell me that Joe Paterno knew Sandusky was abusing kids!".... Some interviewees were told they could not leave until they provided the information interviewers wanted, even when interviewees protested that this would require them to lie"... "Some individuals were called back for multiple interviews where the same questions were repeated; some were told they were being "uncooperative" for refusing to untruthfully agree, with an interviewer's statement. Those who were currently employed by the University, had been told their cooperation was a requirement for keeping their jobs. One individual indicated that he was fired for failing to tell the interviewers what they wanted to hear; this is confirmed by a notation in the FREEH group diary of an interviewee contemporaneously reporting his firing to the investigators. Another entry in the diary indicated that "coaches are scared for their jobs". It is deeply disturbing that members of our community were allegedly subjected to harassment and mistreatment at the hands of Freeh Groups investigators. Further, the use of coercion indicates a lack of neutrality on the part of investigators and as previously noted, increases the likelihood of inaccuracy."

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the failure to deliver thousands of documents to defense attorneys during the trial of Oklahoma City bomber Timothy McVeigh." ... "On June 24, 2014, when an arbiter for the Pennsylvania State Employee Retirement System, hearing an appeal of a ruling about Sandusky's State pension, said in his ruling, "[The Freeh Report] was **based on significant hearsay and was mostly ruled inadmissible** [for the proceedings]." The hearing officer, Michael Bangs, went on to declare that **the Freeh Report had been misleading in significant ways**. He continued, "**The terrifically significant disparity between the findings in the Freeh Report and the actual truth is disturbing.**" He adds that the error "calls into question the accuracy and veracity of the entire report."

**6C30. Investigative Hypotheses and Questions:** Investigative Hypotheses and Questions: Indicia of Negligence and/or Misconduct in the FREEH GROUP investigation – Multiple “rookie” mistakes in the negligent/corrupt Freeh Group Investigation. (See, Thornburgh report noting Freeh Group errors and other critical reports from PSU BD members and others from various sources).

**Investigative Hypotheses and Questions:**

Why did the FREEH GROUP report *negligently fail to document, review, and be concerned about:*

- the *lack of a FRYE hearing,*
- evidence of highly controversial, junk science “recovered memories” at trial,
- the lack of peer reviewed science on Memory and False Memory explained to the jury at the trial,
- the lack of a competent Memory-False Memory expert in this complex-non-normal memory RRM-MPD-DISS case with little evidence but changing “memories”, Inv. Leiter’s April 21, 2011 recorded statement regarding abusive repetitive interviewing methods, and the other errors documented in this report including:
  - the multiple “recovered repressed memory” allegations – like those excluded in other states following a Frye or Daubert hearing
  - the failure of Defense Counsel to provide a Memory-False Memory Expert Witness for the jury
  - the failure of Defense Counsel to provide an expert to explain the history of the thousands of false memories debunked by the FBI (Ken Lanning) and the history of the Memory Wars including licensing revocations for RRM-MPD-DISS therapists like Gillum and Macnab.
  - the evidence of dramatic “memory changes” in witness following interviews-therapy with Attorney Shubin and/or Therapist Macnab? (See, Motion for a New Trial On the Ground of After-Discovered Evidence and Request for Evidentiary Hearing filed June 16, 2022; (See, Transcript of Shubin-Alleged victim SS’s discussion and Affidavit from Attorney D. Litman ; See, Transcript of AJ Dillon Investigation and Affidavit from AJ Dillon).

Will these investigative hypotheses and questions regarding potential Corruption/Negligence in this case be properly investigated in a public forum?

**6C31. EXPLORING CURRENT INVESTIGATIVE HYPOTHESES: *Errors, and/or Negligence and/or Corruption? Protecting the integrity of the legal system.***

Will there be PA Legislature Oversight Committee hearings publicly investigating this case? Will such hearings provide everyone involved a full, fair, and proper opportunity to answer questions and explain in a public forum the multiple, unusual errors in this case and why they happened?

-- Consider for example, Cleland, Fina, and Amendola's apparently "secret Motel meeting" that seems to have set this case on a "likely-conviction-death-march" trial schedule. Why was this meeting not held in court? Why no court reporter? Why no recording? Why was this meeting hidden from defense co-counsel Rominger? Why was this meeting kept a secret until **4 years after** the trial and conviction? Has Judge Cleland held other secret "off the record" meetings in other cases? If so, what cases?

-- Consider for example, Inv. Leiter's April 21, 2011 recorded discussion of a "Systemic Memory Manipulation Process" in this case. Why did Inv. Leiter believe he "knew" what the witnesses' testimony was "supposed" to be and thus keep interviewing them via repetition and repetition until they agreed with him? Was Inv. Leiter aware of the McMartin, Wenatchee, Kelly Michaels and many other cases where convictions were overturned for abusive interviewing misconduct similar to what Leiter describes in his recorded discussion in the April 21, 2011 recording of witness BH?

-- Consider for example, defense counsels' failure to retain and provide an expert witness in memory-false memory-RRM-MPD-DISSL. Why did Amendola-Rominger fail to retain and consult with a memory-false memory-RRM-MPD-DISSL Scientist (not a therapist) expert?

-- Consider for example, defense counsels' failure to file Frye motions, *and the many other related errors listed in this report.* Why did Amendola-Rominger FAIL to file a Frye motion to exclude the "changing" "morphing" alleged "memories", memories the witnesses claimed were "buried", "blocked" and/or "dissociated" thus clearly-not-normal memories? Had Amendola even heard of a Frye hearing? Was he aware of cases similar to the Sandusky case that ended when such an unreliable "memory" process -- of unknown origin, rejected by the relevant scientific community and with no known error rate -- was excluded, along with all such tainted witnesses, ***to protect the integrity of the legal system?***

-- Consider for example, the question of whether Judge Cleland held other secret, "off the record" meetings at a local motel to set "impossibly rapid" impossibly rapid trial schedules? ***Is this the only case where such a secret motel meeting setting a very rapid "impossibly rapid" trial schedule was held?*** If other secret Motel meetings were held – in what cases? Was this an improper agreement to control the trial process? Has anyone asked these rather obvious questions previously?

-- Shouldn't Cleland-Fina-Amendola have a fair, open and public opportunity to testify about why they participated in the reportedly secret-unrecorded-no court reporter meeting in a local Motel that apparently set a "likely conviction impossibly rapid" trial schedule that was so rapid and in such a complex trial that:

-- precluded competent review of evidence – which would have taken a full year by any attorneys and more for the local, poorly trained, science-uninformed Amendola-Rominger.

-- precluded a competent memory-false memory expert – required in such cases,

-- precluded competent cross-examination of witnesses – grossly incompetent during trial

-- precluded having the alleged victim AM testify who would have destroyed the credibility of the key prosecution witness Mike McQueary (Did Attorney Shubin commit criminal Obstruction of Justice by hiding witness AM so he could not testify?)

-- precluded holding an essential Frye hearing to exclude witnesses whose “memory” testimony was based upon the *inherently unreliable, novel, pernicious myth notions rejected by the relevant scientific community* notion of “blocked, buried, dissociated memories” that “come back” following unrecorded interviews with financially conflicted civil attorneys (Shubin) and science-uninformed “therapists” (Macnab)?

-- Shouldn’t Freeh and McChesney and Fina and NCAA lawyers have a fair, open and public opportunity to testify about the reported secret collusion in the production of the Freeh Report and about the many “rookie”, negligent errors in the Freeh report and investigation as listed in this report and other reports (cf. with the Corman, PSU Trustees, Thornburg, Snedden and other reports). Shouldn’t Freeh-Kelley-Fina-Corbett have any opportunity to testify about publicly claiming that the FREEH investigation was “independent”? Was it? Didn’t the PSU BD as well as the NCAA both state they relied upon the “independent” Freeh investigation when Ms. McChesney’s diary, a key Freeh Group investigator reportedly documents many Secret and Extensive contacts between AG team and the FREEH team? Were there Grand Jury leaks and other information shared between the AG and FREEH investigators?

## 7. DR BARDEN WILL OFFER PROBONO TESTIMONY:

**7A. PA LEGISLATURE:** I offer to testify as a pro bono donated service in any *PA Legislative public hearings* investigating the negligent and/or criminal debacle and alleged conspiracies involved in the PA v Sandusky case. This testimony is offered as a pro bono donated service to the people of Pennsylvania to *protect the integrity of the legal system.*

**7B. PA LICENSING BOARDS:** I offer to testify as a pro bono donated service in any *PA Licensing Board hearings* investigating the negligent and/or criminal misconduct by Therapists Gillum, Macnab, Chamgers or others involved in the PA v Sandusky case. This testimony is offered as a pro bono donated service to the people of Pennsylvania to *protect the integrity of the legal and mental health systems.*

**8. IT IS MY OPINION TO A REASONABLE DEGREE OF PROFESSIONAL CERTAINTY THAT THE ANALYSES AND CONCLUSIONS IN THIS REPORT ACCURATELY REFLECT KNOWLEDGE, RESEARCH, AND METHODOLOGIES THAT ARE WIDELY ACCEPTED IN THE RELEVANT SCIENTIFIC COMMUNITY.**

In my opinion, the analyses and opinions in this report reflect the knowledge, research and methodologies of the relevant scientific and professional communities. For example, I have written Amicus Briefs on similar complex science and history issues joined by many international leaders in the fields of psychology and psychiatry. See e.g., also Barden, R. C. (2006) Amicus Curiae Brief of the National Committee of Scientists for Academic Liberty, for Defendants and Appellants, Elizabeth Loftus, et. al., Submitted to the Supreme Court of the State of California, Feb., 2006 with AMICI Aaron T. Beck, Robert Spitzer, Harrison G. Pope Jr., Richard McNally, James I. Hudson, Richard Ofshe, William M. Grove, Paul R. McHugh, Robert Perloff, Stephen J. Ceci, Henry L. Roediger, August Piper, B. Christopher Frueh, Steve Lynn, Peter von Koppes, John F. Kihlstrom, Gerald M. Rosen, Sally Satel, Maryanne Garry, Hans F.M. Cromberg, David F. Bjorkland, Phillip W. Esplin, James M. Wood, Richard Gist, Irving Kirsch, Steven Hayes, James D. Herbert, Robert Montgomery, Harald Merckelbach, James Ost, Scott O. Lillienfeld, Marc Sagerman, Grant J. Devilly, Anthony Pratkanis, Jon D. Elhai, Timothy Tumlin, D. Stephen Lindsay, Paul A. Ornstein, Susan A. Clancy, John W. Bush, Paul R. Lees-Haley, Howard D. Eisman, Mark Creamer, W. Jake Jacobs, Timothy Moore, Daniel David, Margaret Bruck, Amina Memon, Jeffrey M. Lohr, Giuliana Mazzoni, Jean-Roch Laurence, Elizabeth Meadows, Ron Acierno, Steven E. Clark, Saul Kassin, Richard Shiffrin, Michael Toglia, Robert V. Kail, J. Don Read, Loren Pankratz, Michael A. Persinger, Debra Poole, Charles A. Weaver III, Joseph de Rivera, David S. Holmes, Terence W. Campbell, Emily Carota Orne, John Cannell, Howard Fishman, Richard A. Leo, Deborah C. Beidel, James Coyne, Fred Frankel, Nora S. Newcombe, Gordon J. G. Asmundson, Howard N. Garb, William G. Reiner, Mahzarin Rustum Banaji, Robyn M. Dawes, Robert A. Karllin, Harold I. Lief, Daniel L. Schacter, Steven Pinker, Naomi Breslau and more.

**9. I HAVE PREVIOUSLY TESTIFIED REGARDING SIMILAR ISSUES IN A NUMBER OF JURISDICTIONS:**

I have been qualified as an expert and testified in court and/or given depositions and/or submitted expert reports in a number of jurisdictions across the United States on similar subjects. I have also testified before several state legislatures (NH, AZ, UT, CO, etc). My testimony in these venues often focuses on a range of issues including but not limited to: child and developmental psychology, methodological principles and errors, ethics violations, proper and improper investigation methods, standards of care in psychotherapy for all therapist professions, memory contaminative effects of improper questioning of witnesses, assessments of the reliability and validity of therapist-expert witness practices, the science of coping and resilience, testing and assessment, psychopathology, the science and history RRM-MPD-DISS memory-false memory-memory contamination, the history of the mental health system, and related matters as discussed in this report. .

**10. BASES FOR MY EXPERT OPINIONS IN THIS MATTER:**

My opinions in this matter are based upon my education, knowledge, training, and years of experience in the fields of adult-clinical, child-clinical, and forensic psychology as well as my extensive review of case materials in this matter. My relevant experience in these fields includes:

**FORENSIC TRAINING and TEACHING:** I received forensic training at the joint Harvard Medical School/ Harvard Law School forensic training program. I have taught forensics at the Univ of MN Law School and at CLE, CME, CPE talks to thousands of professionals across the US as well as at invited talks to the American Psychological Association, the American Psychiatric Assn, the American Bar Association, and others.

**PSYCHOTHERAPY TRAINING, EXPERIENCE and TEACHING:** I have provided psychotherapy to numerous patients including children, families, and adults (in schools, clinics, and hospitals), as well as training psychology graduate students in interviewing and psychotherapy standards and methods. I have done therapy-counseling with hundreds of patients/people in a wide range of settings including Stanford and the U of MN medical Schools, the Palo Alto VA Medical Ctr/Stanford Medical Ctr APA approved Internship, the Mental Health Clinic of the Stillwater Maximum Security Prison in MN, the UC Berkeley Psychology Clinic, the U of MN Hospitals, various church counseling settings, the Minneapolis Walk-In Counseling Center, and others. At the University of Utah APA Approved PhD Clinical Psychology Program I taught and supervised PhD students in how to conduct psychotherapy. See also, the detailed qualifications chart above that includes a list of therapy experiences.

**RESEARCH REVIEW AND ORIGINAL RESEARCH:** I have reviewed hundreds of peer reviewed published research studies, serving editorial roles for multiple leading professional journals, and initiating, as well as conducting and publishing original research in the leading journals in child psychology, social psychology, personality psychology, surgery, public policy and legislation. More specifically, I have published in, and/or served as an editor or reviewer for, several of the most highly regarded journals and texts in a number of professional fields including Developmental Psychology, Child Development, Psychological Bulletin, Ambulatory Pediatrics, Advances in Child Clinical Psychology, the Journal of Personality and Social Psychology, the Journal of the American Academy of Psychiatry and the Law, the Journal of Plastic and Reconstructive Surgery, the Harvard Journal of Law and Public Policy, and the Harvard Journal on Legislation;

RECIPIENT OF NATIONAL RESEARCH AWARDS in PSYCHOLOGY: including the Foundation for Child Development National Award for Young Scholars in Social and Affective Development, 1982 - 1983 and the National W. T. Grant Foundation Faculty Scholar Award for Research in Mental Health, Stress and Coping 1987. Both awards are relevant to my analysis in this case;

TEACHING AND TRAINING. I have given invited addresses and advanced courses at major Ph.D. graduate programs, a leading law school, and continuing education courses for Psychologists, Psychiatrists and Attorneys. I have also trained investigators including F.B.I., Sheriff's Officers, and police staff. I was an Invited Training Speaker at the Minnesota Sex Crimes Investigators Association (1994) and Invited Training Speaker at the Midwestern Sex Crimes Investigators Association. I also served as a Special Assistant Attorney General of the State of Utah as a trainer and consultant on cases involving licensing prosecutions of mental health professionals.

**EVIDENCE REVIEWED IN THE PA v SANDUSKY CASE and RELATED ISSUES:**

- Evidence including trial-hearing transcripts, motions, exhibits, media, books, etc., the Freeh Report, Corman Report, Thornburgh report, PSU BD report, Snedden Federal Investigation Report, and other information as listed in this report.
- Published Research on Memory, False Memory, Dissociation, and many other areas as cited and discussed in this report.

**PUBLIC SERVICE EXPERIENCE**

- Psychology Practicum - University of Minnesota Medical School, Dept. of Psychiatry
- Psychology Practicum - Stillwater Minnesota Maximum Security Correctional Facility
- Psychology Practicum - Minneapolis, Minnesota Public Schools
- APA Approved Psychology Internship - Palo Alto V.A. Med Ctr/ Stanford U. Med Ctr.
- Psychology Consultant Craniofacial Surgical Team, Baylor Medical School, Dallas, Tx
- Psychology Consultant Craniofacial Surgical Team, Primary Children's Hospital, SLC, UT
- Harvard Law School Intern, Mass. A.G.'s Office, Crime Victim Compensation Program
- Chief Author and Legislative Consultant, Emergency Medical Systems for Children Act
- Forensic Psychology Intern, Harvard Medical School/Harvard Law School Forensic Program, Massachusetts Mental Health Center
- Member, Minnesota State Board of Psychology (Appointment of MN Governor)

- Member, Minnesota Higher Education Coordinating Board (responsible for overseeing the MN. multi-billion-dollar budget for all state colleges, universities and trade schools) by appointment of Governor Arne Carlson (1993-1994)
- Invited Training Speaker, Minnesota Sex Crimes Investigators Association (1994)
- Invited Training Speaker, Midwestern Sex Crimes Investigators Association (1995)
- Invited Training Speaker, US Surgeon General's Conference
- Consultation with the U.S. Attorneys Office, F.B.I., other national experts
- Court appointed expert witness, St Croix, Wisconsin
- Legislative Consultant, Legislation to ban "Holding Therapy" in Utah
- Legislative Consultant, Legislation to ban "Rebirthing Therapy" in Colorado
- Author, Emergency Medical System for Children Act
- Consultant, Minnesota law protecting patient's rights
- Consultant to various State Boards re: licensing actions
- Special Assistant Attorney General for the State of Utah (2004-2005).
- Expert Witness for the Prosecution, State of Colorado v. Watkins, et al. (Newmaker "rebirthing therapy" case) 2001.
- Expert Witness for the Prosecution, State of Texas v. Harris, (MPD "Twilight Rapist" case) 2011.
- Prosecution consultant King County, Seattle, Washington (Green MPD case 2003).
- Prosecution consultant U.S. Attorney's Office, Houston, Texas U.S. v. Peterson, et al.
- Testifying and consulting expert witness, U.S. Federal Public Defenders Office
- Consultation with national experts in law and psychology
- President, Board Member - Character & Morality in Entertainment (CAMIE Awards) 2008-2010
- Invited International Address on Performance Psychology, Beijing Olympics (Aug-2008)
- Legislative Consultant, Minnesota Legislation to ban abuse of incompetent patients in research studies See, 253B.095 RELEASE BEFORE COMMITMENT (2012) "*The treating psychiatrist must not be the psychiatrist conducting the psychiatric clinical drug trial. The court must determine that, under the circumstances of the case, the patient is competent to choose to participate in the trial, that the patient is freely choosing to participate in the trial, that the compulsion of the stayed commitment is not being used to coerce the person to participate in the clinical trial, and that a reasonable person may choose to participate in the clinical trial.*"
- Pro bono consultation and testimony for Prosecution and Public Defender cases in many states
- Invited address, Center for Enhanced Performance, US Military Academy, West Point (4-2010)
- Invited address, F.B.I. Midwest Regional Supervisor Training Conference, (9-2010)
- Invited address, F.B.I. Midwest Regional All-Employees Training Conf., (12-2010)

- 2012 - Captain, US Air Force Auxiliary Civil Air Patrol - Viking Wing, MN  
- Reforming the EMERGENCY MEDICAL SYSTEM FOR CHILDREN - See, Barden, R. C., Kinscherff, R., George, W., Flyer, R., Seidel, J., & Henderson, D., (1993), Emergency Medical Care and Injury Prevention Systems for Children: An Economic-Medical-Legal-Psychological Analysis and Legislative Proposals, Harvard Journal on Legislation, Vol. 30, No. 2, pgs 461497. Some version of this proposed legislation was reportedly enacted by the States of New Jersey (1992), Texas (1993), Utah (1994), Colorado (1995), Hawaii (1996), Louisiana (1996) and others. These legislative ideas have continued to expand across the U.S. As of July 1997 18, states reported the creation of a separate Emergency Medical System for Children Advisory Board (as required by this legislative proposal) and 15 states required pediatric representation on State EMS Advisory Boards. (See, EMSC News, Vol 10, No. 2, Summer 1997).

**8. LIMITATIONS ON THIS REPORT and TESTIMONY:** My opinions and hypotheses in this matter are subject to the limitations of all documentary and related evidence, the impossibility of absolute predictions, as well as the limitations of social science analysis. I have not met, nor interviewed, nor evaluated, nor assessed, nor produced any diagnoses nor psychological diagnostic descriptions of anyone in this investigatory process. As always, I have no expert opinions regarding the veracity of witnesses, the judgment of juries, or the guilt/innocence of any defendant. I will continue to review evidence in this case and update opinions. My opinions are thus subject to change at any time as new information becomes available to me including any observations, analyses, and opinions from observations at future public hearings, court hearings, or any future re-trial of this matter. I continue to seek to review all relevant evidence in this case. Only the trier of fact can determine the credibility of witnesses and how scientific research may or may not be related to the specific facts of any case. In my opinion, a key role of an expert witness is to help the court, lawyers, parties, and the public understand and apply reliable and proper scientific, technical, and investigative principles, hypotheses, methods, and information *to protect the integrity of the legal system*. I have transmitted this updated expert witness report to the PA office of Attorney Al Lindsay, JD for use consistent with the rules of the relevant jurisdiction.

**9. My investigation of this complex and important matter continues and updates to this report are expected.** For future updates, I hope to have time to do a more thorough organization and editing process plus fully citing more of the evidence on this very complex case. There simply wasn't enough time for such finishing touches on this version of the report.

I, R. C. Barden, Ph.D., JD, do swear and affirm the truthfulness of this expert witness report as filed and signed on January 18, 2023

**EXPERT REPORT E-Signed, Dated: January 18, 2023**

*R. Christopher Barden, Ph.D., J.D.*

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**R. Christopher Barden, Ph.D., J.D.**

**Investigating Expert Witness in Pennsylvania v Sandusky**

**A key role of an expert witness is to help the court, lawyers, and/or parties understand and apply reliable scientific, technical, ethical, and investigative principles, methods, alternative hypotheses, and information.”**

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INTERVIEW WITH S\_\_\_\_\_ S\_\_\_\_\_  
PART I

AJS: Ok, so it's January 15, 2018. I'm at The Ranch here with S\_\_\_\_\_ S\_\_\_\_\_ and with Jill Curley, his mental health treatment provider and we're conducting an interview and I just want to make sure that it's okay to tape this interview, S\_\_\_\_\_?

SS: Yes.

AJS: So S\_\_\_\_\_, this is the time I think I want to start to get into the issues relating to sexual abuse. It would have seemed that your first summer that you met with Jerry, the first summer that you went to Second Mile, you were 8 years old. So you would have been there for a week. Normally, every camper meets him and in my experience with other campers is that the first year, first summer, it wasn't normally the time that the kids were abused. It was after that. The kids would go to camp the first summer, Jerry would figure out who he was going to predate upon and then in the off fall, there would be the football games and the other stuff would Jerry would get a lot closer to his targets and begin to sexually abuse them. So I know I'm taking you back to the 2000's when you were 8 years old, but do you remember anything of that first time that you went to the Second Mile?

SS: I just remember like jumping off like the swimming pool, the diving board, like the high dives and stuff. Just doing different like events like meetings and I remember meeting him that year in like a closeout meeting type thing at night...like he spoke and walked around and introduced himself to people. That's all I really remember of that year and then the next thing I remember was we were getting invited to the Lakemont Casino and that's when I actually physically met him, not inside the program or anything like that when he asked us to be his guests.

AJS: Why would he...so you would have gone the summer of 2000 and then you would have gone again the summer of 2001 and then the Lakemont Casino was in November 2001. He would have known you in order to, and he wouldn't haven't invited you without having known you already or at least it doesn't seem logical to me, right?

SS: Yeah.

AJS: So that summer of 2000, you remember the pool stuff and we talked a little bit about the pool stuff before, but in the pools, Jerry was often, that was sort of the first time he would grab kids, their genitalia, sort of "mistake" kind of with plausible deniability. He would start that certain molestation in the pool. Do you remember that? I'm not sure if you can pinpoint it down to one year vs. the other, but do you remember being in the pool with him?

SS: I remember being in the pool with him. I remember him groping me and then I just like pushed his hand away and he would just be like "oh, I didn't mean to" or something like that. Like just play it off and like I thought it was accident. But it just continuously started happening.

AJS: You said while you were in the pool? I guess and other places?

SS: In other places too.

AJS: Right, but you do remember it in the pool?

SS: Yeah

AJS: Do you remember if the pool was the one at Penn State with the big high dives or...

SS: It was big high dives, yeah.

AJS: Do you remember being at another pool with him at maybe, at the pool owned by a friend of his, not too far away at a golf course?

SS: No.

AJS: Okay. Um...

SS: I'm not saying that it didn't happen. I don't remember it personally.

AJS: Right.

SS: But it could have.

AJS: Alright, but you do remember swimming at the pool at Penn State?

SS: Yeah.

AJS: Okay, um, and so do you think it was during camp when you were swimming there and Jerry would grope you.

SS: Yeah, it was during camp.

AJS: Okay. Alright, um, and do you remember if you were, at that point, whether you already sort of knew who he was so it may not have been the first year, maybe the second? Do you remember?

SS: I mean, I knew who he was. He was the old Penn State defensive coordinator.

AJS: Right.

SS: And I just kind of looked up to him.

AJS: Right.

SS: And I admired him and I was a football player then and I loved football.

AJS: Right.

SS: So, I just, I don't know. I just kind of like looked up to him.

AJS: Right. Um, so it appears from the records that you would have been at Penn State, at the Second Mile, for 3 one-week sessions, right, for camp?

SS: Yeah.

AJS: And during the camp sessions, it seems like you remember specifically, the groping in the pool?

SS: And the dorm room too. I can remember one year, I don't know if it was at the football camp or if it was at the Second Mile, but I remember he gave me like a big case of Jack Links peppered beef jerky stick things.

AJS: Right.

SS: I don't remember if it was at Penn State or if it was at the football camp.

AJS: Right. Do you remember that it was just for you and not for the other kids?

SS: Yeah, it was just for me. It was like a whole case of it.

AJS: Did you have your own room, or do you remember if you were sharing it?

SS: I'm pretty sure I was always with my brother. We didn't share a room with anybody else. It was just me and him.

AJS: Right, at the summer camps and at the football camps, etc.?

SS: Yeah.

AJS: Except for the time that Jerry coached?

SS: Yeah.

AJS: Alright, um, can you remember anything else from the camps?

SS: Um...

AJS: Um, not from the camps, I mean, from the, well yeah, from the Second Mile camps in terms of, you know, maybe him, doing something to you in the bathroom or asking you to help

him clean up before the kids were there. Just sort of singling you out for special treatment during those camps?

SS: No, not that I can recall of anything of that.

AJS: Right. Okay. Um, after the camps, sort of between the camps, during the fall, right, do you remember the first time that you went to a Penn State football game? Do you remember who they played, or do you remember if it was before the, you know, your second year, after your first year at Second Mile?

SS: I don't. I don't know who they played. I thought we met him personally at the guest speaker thing.

AJS: It just doesn't seem like it would make sense to me, because the, you know, it's certainly possible.

SS: I mean, I could be wrong. I was young. I don't remember like...

AJS: Because he chose you out of all the other kids, so it seems to me that he would have had a reason to choose you, right?

SS: Yeah.

AJS: So, um, you know, my guess is that there was some, some personal relationship at that point. Do you remember speaking at that?

SS: I remembered we got acknowledged and we stood up and I remember him speaking and then we got acknowledged as his guests and there was a picture taken of all three of us – me and my brother and him – put in the Altoona Mirror.

AJS: Right.

SS: The newspaper.

AJS: Right, right, right.

SS: But I don't really even remember what the event was even for.

AJS: Okay, well it was a fundraiser.

SS: I remember, I'm pretty sure that was the first time I ever stayed at his house was that night and the night afterwards.

AJS: But you remember going back to his house from Altoona?

SS: Yeah. I'm pretty sure he, I think he picked us up at our house and then drove us there to the Lakemont Casino and then my parents may have met us there afterwards?? I remember my parents being there afterwards.

AJS: After what?

SS: After the fundraiser was over.

AJS: Okay.

SS: And they gave us our bags of clothes and stuff. I don't remember if they came or if they were just sitting out there waiting. I don't remember exactly, but I just remember staying at his house that night afterwards.

AJS: okay, um, so you stayed there, or you think you stayed with Josh? Is it your recollection that that was the first time you were at his house?

SS: I believe so, yeah.

AJS: So you're an 8-year-old, 9-year-old kid at this point, right? You drive back in a car with Jerry and is Dottie there too?

SS: Yeah, it was a Honda CRV.

AJS: It was a Honda CRV?

SS: Yeah.

AJS: Um, so you recall Jerry driving and I take it Dottie was in the passenger seat?

SS: Yeah.

AJS: Right, and the two of you were in the back seat? Is that right?

SS: Yeah.

AJS: Okay, um...

SS: I remember sleeping in the upstairs bedroom to the left and he gave us, uh...

AJS: Gym shorts?

SS: Yeah, blue, it had the Penn state logo or Second Mile logo on them.

AJS: Right, so your parents packed you clothes, probably pajamas, but he gave you the gym shorts, okay.

SS: Yeah.

AJS: Go on.

SS: I remember him just like sitting there, hanging out with us for a little bit, I don't remember if we went downstairs and hung out for a little bit first or if we went upstairs. I just remember before we went to bed, like, he sat there on the bed and like talked to me and him and gave us like "bear hugs" as he called them and then like kissed us on the forehead like goodnight. I just felt like special, like of all people at those camps, we got picked out to go.

AJS: Did he tell you he loved you?

SS: Yeah. All the time.

AJS: Right. okay. Um, and so you think that night the two of you were in the same bedroom.

SS: Yeah.

AJS: Were there two beds in there?

SS: Yeah, two single beds.

AJS: Right, do you remember, um, whether the lights were on or off when he was talking to you?

SS: I'm pretty sure they were on.

AJS: So it's just the three of you.

SS: Yeah

AJS: Were there any other kids there, other than his own kids that you remember?

SS: I don't even remember any of his own kids ever being there.

AJS: Right.

SS: I think I only met the one that was a coach at Albright, I think. Kind of heavier set guy.

AJS: Yeah, well, there's also, he's got the one that was with the Eagles, right?

SS: Yeah, and then the one with the Eagles that was the scout or whatever he was.

AJS: Let's just see what day of the week November 11, 2001 was to see if there was a football game right after that or whatever. Thank God for the internet, right? That was a Sunday. So let's

see if there was a Penn State game on November 10<sup>th</sup>. So they played Illinois on the 10<sup>th</sup>. But they were at Illinois. Okay. They lost. Okay, so he would have been at away football game the day before. I was just trying to figure out whether maybe you were at the football game on the 10<sup>th</sup> and then stayed over and then went to thing, but it doesn't look that way. Um, okay, so, um, on the 11<sup>th</sup>, um, on a Sunday, you recall going back to his place, now maybe the 12<sup>th</sup> was veteran's day, I don't, you know, it would be a school day, but you don't remember going to school the next day or...?

SS: I don't.

AJS: Do you remember anything else about that first visit?

SS: Um...

AJS: Did he take you to Penn State's campus to show you around?

SS: I remember going to the campus and showing us around, but I don't know if it was that time?

AJS: Right.

SS: But I do remember going to the Penn State campus like locker rooms, the shower rooms...

AJS: Right.

SS: The weight room...

AJS: Right

SS: We worked out for a little bit, then changed in the locker room and then we got showers in there.

AJS: Right, right.

SS: I know he groped me a couple different times in there and I didn't really think nothing of it. I always just thought it was like an accident.

AJS: Right, right.

SS: I was young.

AJS: Yeah, yeah, yeah. Um, so, so that's a pretty good memory, not a good memory, but a pretty detailed, a little memory of that first time there. Um...

SS: Getting whipped with towels and did the towel whipping.

AJS: Right, right, so let's talk about the stuff that happened at Penn State in the locker rooms, in the weight room, that sort of stuff. Um, maybe that's just sort of the best way to do it is by location, right. So you know as I said to you before, Jerry's sort of *modis operandi*, at least as far as I have observed is that, um, there would be...take kids to the football, working out and football areas within the University, not far from where that great big turfed area was, sort of in that same general area, um, to, um, when it was unlikely that there would be other people there. So in the evenings, that sort of stuff.

SS: Early mornings, I think.

AJS: Okay, so do you remember times when he would have picked you up at your house and taken you to the Penn State facilities or how it is that you got there?

SS: Um, I know my parents took us to his house a couple times and then he'd either bring us back or there was other times that he picked us up at our house and then, I don't ever remember going straight to like the Penn State, we'd always go back to his house and...

AJS: Right, right.

SS: Then we'd go do things.

AJS: Right, right. And "going to do things" means, meant basically going to Penn State?

SS: Yeah.

AJS: Okay, and um, on Penn state's campus, were you usually in the football area?

SS: Yeah.

AJS: Okay, so there would be a place, a weight room, is that right?

SS: Yeah.

AJS: ...and do you remember a time when anyone other than you and Jerry or you, Jerry and [REDACTED] were in the weight room?

SS: Not that I remember. But it's not, I'm not saying that there wasn't people. I'm pretty sure it was always on like a weekend. I don't ever remember being there like during the actual week because we had school.

AJS: Right, right. Do you, um, um, recall, um, do you recall going into the locker room with him?

SS: Yeah.

AJS: Do you remember, was it one of those, do you remember the locking system, do you remember it being a push button or not?

SS: I remember some type, I think it was a card?

AJS: Right. Okay. A security card to get into the building, but not in the locker room?

SS: Yeah, I don't remember nothing on the locker room.

AJS: Okay.

SS: But there could have been, I don't know. I remember a card, I think.

AJS: Right.

SS: I don't know if it was a card or not, but I remember some type of locking system to get into the actual buildings.

AJS: There would have been, so, I forget which year Penn State, the football program switched from the one locker room to the next. But, um, you probably would have been at both of them. Do you have a recollection of it going from like an older building to a new building?

SS: I think it was just a newer building.

AJS: Okay, so that probably...

SS: It was the nicest...It could have been the old, I don't know. I don't remember going to two separate ones.

AJS: Let's see when that change to the...when did the Lasch building open? I think that's what it was called. Apparently, they are making improvements, so every article is about this improvement. So that building?

SS: Yeah, I remember walking through, like a bunch of like, back side buildings or between things. I just remember it having really nice equipment in the inside.

AJS: Yeah, okay, so it's completed in 2000. So you, um, it appears then that, well 2000 was the first year that you were there, right?

SS: Yeah, I think, I guess.

AJS: Okay, so it makes sense that you were never in the older locker room. Cause Lasch opened up in 2000, late 2000, for the 2000 football season. Okay, so you would have been in the nice building. Do you remember being in Jerry's office, I think it was on the second floor.

SS: I don't.

AJS: Okay. Alright, so you remember being in the weight room, you remember being in the locker room, you remember being in the showers, was there any other room that like that had maybe had a training table with mats on the ground where you would wrestle with him?

SS: I'm not sure.

AJS: Do you remember wrestling? Doing the wrestling?

SS: I remember doing it at his house, like we would wrestle and stuff.

AJS: In his basement, right?

SS: Yeah.

AJS: Okay

SS: But I don't know if I ever did it at Penn state. I don't remember.

AJS: Right, right.

SS: I just, I know we did it at his house for sure and then it would always end up in like a bear hug and like he would start rubbing my thighs and rubbing his hands around my waistline and then he'd grope me a couple different times and like I'd pull his hand away. Then he'd always tickle us.

AJS: Right, right. Okay, so let's go back to Penn state for the time being. So in the locker rooms, do you, do you remember the snapping of the towels, right? Would he undress you? Do you remember if he undressed you?

SS: Not that I recall.

AJS: Um, and um, do you remember him soaping you up and washing you in the shower?

SS: No.

AJS: Okay, um, do you remember him lifting you up to the shower head and putting your head in the shower head?

SS: No.

AJS: Okay, what do you remember from the showers?

SS: I'd get in the shower and then like he'd start goofing off, starting whipping like wet towels around, and then like he groped me a couple different times in the shower.

AJS: And so when you say "groped", what do you mean?

SS: Like, grab my penis.

AJS: And did he masturbate you?

SS: He tried to. I like pulled it away and then like he just stopped.

AJS: Right, and did he ask you to touch him?

SS: Not that I ever recall, no.

AJS: Okay.

SS: I don't remember doing nothing.

AJS: Right, okay, um, and did he, in the showers, did he, um, try to have anal sex with you?

SS: No.

AJS: Okay, so you don't remember that happening at all or just not in the showers?

SS: In the showers, or I don't think ever.

AJS: Right.

SS: I don't think at least. I don't recall that.

AJS: Okay. Um, and um, so in the showers, you recall him grabbing your penis. Um, do you recall whether he had erections in the shower?

SS: Yeah.

AJS: Okay.

SS: I thought it was weird and I didn't really know, like, what to do.

AJS: Right.

SS: I just felt really uncomfortable and like I kind of walked away back into the locker room... .

AJS: Right.

SS: ...and got dressed.

AJS: Do you remember him having orgasms? I mean, you might not even have known, you were 8, 9 years old, whether he had...you don't?

SS: I don't know.

AJS: You don't know?

SS: No.

AJS: Okay, alright.

SS: He could've. I don't really know.

AJS: Right.

SS: I don't think I even really knew what that was at that age.

AJS: Right, right, right. Um, now, um, back at, in his house, let's talk about what happened in the, in the guest room. Um, so tell me what happened in the guest rooms. What do you recall?

SS: Him kissing me all the time, like on the forehead or the cheek, saying he loved me, tickling me, like giving me like big bear hugs as he called them.

AJS: But the bear hugs, weren't they an opportunity to grope you as well? What happened during those bear hugs?

SS: Uh, usually like he'd pull us like on top of him and like you'd face him and he'd just like hug you really tight and like he'd ask you to hug him back and I just remember like laying there sometimes and like he would just start rubbing my thighs and like slowly going up farther and then like I'd push his hand away and then he'd do it again and then there was a couple times that he'd just actually like got in my waistline and grope me.

AJS: Right.

SS: I think I pulled it away and then he'd just like try to play it off and like tickle me then.

AJS: Right, right.

SS: And like, I felt uncomfortable, but I didn't know anything, like, I felt like it was an accident, but at the same time I didn't feel like it was an accident.

AJS: Right.

SS: I didn't know what to think. Like, I still thought, I don't know, like I was privileged to be there with him.

AJS: Right.

SS: Like all of the other kids, he picked me.

AJS: Right, right, right. Um, tell me about the blowing on the stomach routine.

SS: It would usually be like during like the tickle time and he like would lift your shirt up and blow on your stomach all the time.

AJS: Do you recall him pulling your shorts down so he could blow closer to your genitals?

SS: No. I don't remember that ever.

AJS: Do you recall him kissing your belly?

SS: Yeah.

AJS: Singing a song?

SS: Yeah, I don't remember what song, but I know he did it a lot of times.

AJS: Right.

SS: Whether it would have been in the bedroom or downstairs in the basement, usually playing pool or something or air hockey and then laying here in front of the TV or the couch.

AJS: Right, right. Um, during any of those time periods, do you recall him feeling like he had an erection or feeling his penis against your body?

SS: Yeah, a couple different times, like he would pull me on top of him and I recall like touching me somewhere, like I just felt something like hard and I didn't really know what to think.

AJS: Um, and during any of the times at the house, do you recall seeing his penis?

SS: Uh-uh

AJS: So you think he had clothes on top?

SS: Yeah.

AJS: Right. Um, so let's talk about in the basement, the kinds of stuff that happened in the basement.

SS: I was always usually down in the basement.

AJS: Okay, so I was talking about the bedrooms before but...

SS: Well, he'd lay in bed with us.

AJS: The bedroom was not in the basement though, was it?

SS: There was a bedroom down there, but I never stayed in that one.

AJS: Okay. Right. You stayed in the one where you walk in the front door to the left.

SS: Or at the top of the steps on the left.

AJS: Right.

SS: And it was like the same routine like if I stayed in the one, right in the door on the left when you walk in the house, he'd do things like as far as like the tickle time, pull me on top of him, feeling the erection, like while my brother would be in the shower.

AJS: So when your brother was in the shower, you would, that's when he would molest you?

SS: Yeah.

AJS: Okay, um, do you recall any other periods where he's separating you from your brother?

SS: No.

AJS: Do you recall anything else?

SS: No, not until the football game that year.

AJS: And then, how about in the showers?

SS: Where?

AJS: Um, at Penn state, do you recall any times that you would have gone there without your brother or, um, been separated from him?

SS: I think there was like one of the times he wasn't in there and I think he might have still been out in the weight room working out because he was 4 years older than me...

AJS: Right.

SS: Or running on the treadmill or something.

AJS: Okay.

SS: I don't remember exactly what, but I know when he did things in the locker room there, I know my brother wasn't in there.

AJS: He wasn't in there?

SS: No.

AJS: Okay. Okay, um, let's talk about, um, so we're talking about the basement now, so in the basement, there was wrestling, and the wrestling was groping, right? Um, and in terms of you, so he would touch your genitalia, right? And you would feel his, his penis, sometimes hard against your body. Do you recall him asking you to touch his penis or putting your hand there or your mouth there at any point?

SS: Uh-Uh.

AJS: Okay. Um, alright, um, let me think. So, um, let's sort of skip to the football camps now. Um, tell me what you recall about the football camps? Was that, were there times at the football camps where you recall sort of being....um, where you recall being....where you recall being singled out like for help me, help Jerry with this or help Jerry with that, like you were the go-to kid there?

SS: Couple different times, but I don't remember exactly like what it was for. I think he might have used me as like, uh, how do I want to put it, like a, an example to like show the other kids like how to do the drill or something.

AJS: Right, right. Okay, what do you remember, um, occurring at the Penn state football camps?

SS: For the most time, like my brother was there and like we stayed in the same dorm and then I remember a year that, um, I took my friend with me and we were roommates. I think my cousin may have went that year or something.

AJS: Right.

SS: And I think my brother and him stayed together. I think...I don't remember exactly. One year, that I left, I was there for a day. I remember getting there and my brother was put like the coach's section, I guess it was, I don't know. It was like a different section of like the dorm where the coaches would sleep and I was on the section for like the campers...

AJS: Right.

SS: ...And I think we got there before like any of the other people got there yet and he came in the room that night and, uh, like laid in my bed with me, like he did like the tickle thing, the bear hug thing, and then, he groped my penis a couple different times and like I just felt really uncomfortable cause I started getting a little older and I just didn't feel comfortable with it. I knew something was wrong, but I didn't know what and I didn't have my brother there that year in the dorm with me and I just remember starting to like cry and said I want to go home and then

he let me call home to my mom and I think I may have stayed through the day or they may have came that night after, I don't remember exactly, but I just remember them getting there really late and then we drove home.

AJS: Right. Do you remember Jerry ever talking to you about that kind of contact, about how you should, that you shouldn't talk about it or...um, that this is because you love each other or, um....?

SS: No, I just, I know he always said he loved me.

AJS: Right.

SS: But I don't recall him ever saying don't talk about it, don't say nothing.

AJS: Right. Why did you feel that you shouldn't talk about it?

SS: Um.

AJS: I think it's a self-evident question, but I just want to....

SS: I mean, cause I didn't know what to feel, like, I felt like it was wrong and then at the same time, like, I didn't know what to think.

AJS: Right.

SS: I just felt, like I said, I felt privileged to be there, like I was singled out, I was special amongst all the rest of the kids that I got singled out and my brother got singled out to go to the camp and ride with him to the camps, stay at his house, and do all the things that we did.

AJS: Right.

SS: And all the rest of the kids didn't have that experience.

AJS: Um, do you recall, um, after the camps, whether you stayed in touch with Jerry?

SS: Yeah.

AJS: Okay, tell me about that.

SS: We'd still like go over to his house, hang out...

AJS: Right.

SS: Like stay over on like the weekends and we went to like Penn state games and um, he took us to Steeler games, Eagle games, went into the locker room of the Eagles games with his, I don't know if it was his real son or his adopted son, I know he had a couple actual real kids, I think.

AJS: Okay.

SS: ...and the rest were adopted.

AJS: You don't think that you stayed at hotels? I think we talked about that.

**SS:** No. I don't ever remember staying at any hotels.

### AJS: Or staying over the night?

SS: The one Penn...I mean the one Steeler game, he missed the exit or something, and that was the year that it was snowing and we were going down the highway and like the brakes like locked up or he tried locking them up because we started sliding and I think we hit the car in front of us and I like got out because there was a bunch of traffic and there was no damage done to either car and like that was just the end of that and we just got back off the exit and got back to the right direction to go to the game and then going down to like the sidelines before the game and then taking a picture. ~~Football~~ was there that year.

**AJS: Right.**

**SS:** And I know we had like really high seats in the stadium.

## AJS: In Philly, or is it Pittsburgh?

SS: No, it was Pittsburgh. I really don't remember where we sat or anything at the Eagles game. I just remember going to the Eagles game and going into like the locker room and stuff.

AJS: What was the last time you saw Jerry?

SS: Um, at I think at brother, sister, Big Brother program or whatever it was that he had for the Second Mile through Penn State Altoona. We went to some event down in Penn State Altoona and like met him there and I think it might have been like an Easter egg hunt or something and they had Dominoes or Papa John's Pizza for all like the little kids and stuff and played like volleyball inside.

**AJS: How old do you think you were?**

**SS:** I know I was older then.

AJs: Right, were you driving?

**SS:** No. Not yet, I think my brother was driving at that age then.  
**AJS:** Right.

SS: And he drove us there.

AJS: Okay, when did you hear about the Jerry Sandusky stuff coming out?

SS: When...

AJS: That was in November 2011 I think, but do you remember where you were?

SS: I just remember my mom, like I don't know, they got, Anthony Sasano somehow got in contact with I think my mom and then we set up some type of a meeting and we met at my church's like wreck hall, not wreck hall, but offices for like the priest and stuff where it would be quiet and there was nobody around, nobody would know and like he asked us que....he asked me questions.

AJS: Was it just him or was there someone else with him?

SS: I'm pretty sure it was just him.

AJS: Okay.

SS: Like, he asked us, he asked me if anything happened and I just said about like the rubbing of the thigh and the leg and stuff and I never told him anything else happened at that point in time. I was older and I was already getting high and stuff.

AJS: Right.

SS: When it came out, I was like a year out of high school and I was drinking and drugging and I knew it was intentional at that point.

AJS: So you would have been like 18 or 19 years old at that point, right?

SS: Yeah and I mean even before that like I knew that it was intentional like as I got older into like Jr. high school and I started like self-medicating and experiment with things and start using to deal with like the emotional pain from it that I let something like that happen as kid. And like I felt like it was wrong, but I didn't want to think it was wrong.

AJS: Right.

SS: And that's when I just stopped going around him and stuff and answering his phone calls and I don't ever remember him getting mad or anything but I just started self-medicating all the time.

AJS: Right, did he ever confront you about the drug use?

SS: No, because he never knew about it. I remember him getting grants or scholarships or something for my brother for school.

SS: And I didn't want to talk about it.

AJS: Yeah, you weren't ready.

SS: I just said no, nothing happened and just buried it even more. I took drug court and started doing good and stayed clean for a little bit and then the next thing I know I found myself, I was working, I ended up getting laid off the day after black Friday in like 2013 into 14, started selling drugs again and I had like 6 months left to finish out my drug court program and I ended up catching a new drug sale and went to state prison and....

AJS: The SIP program?

SS: Yeah and got out and went to rehab for part of the SIP program, then went to the half-way house and started abusing some pills and next thing I knew I was doing heroin again and I would try to beat the system and after I would get a drug test, I knew I'd be good for a couple days, I'd be able to get high for a little bit, like 2 or 3 times and then I'd have to quit and I'd be clean by two days from the next random.

AJS: Right, right.

SS: And then it got to the point where I just kind of said fuck it and just started getting high all the time and wanted to go back over to jail and do what they call like your first whole piece on the SIP program at the half-way house was in, you'd get your first time dirty urine, you'd go from one to two days in the hole and then you'd come back and your second dirty urine, you're doing 3-5 days and your third one, you're doing 7-10 days and then your fourth one, you were going back to the hole and then you had to take the therapeutic community rehab program over again at the jail for 60 days, then they'd let you back out and I got up to number 3, got out, stayed clean for 2 months, got transferred to another half-way house in Johnstown, PA and within 10 minutes of being there, I walked into my room and my cousin was my roommate and out of the 5 other people in there, 4 of them had needles hanging out their arm and I relapsed instantly.

AJS: Right.

SS: And it was just off to the races there.

AJS: Right.

SS: And I got high for about a month straight of beating piss tests because I found a way to do it in Pittsburgh, I was putting the seal over the piss cup the label was signing it saying that I am like acknowledging that this cup is sealed shut and it's being sent to the lab sealed shut, well, I'd break the seal on it, right before I'd put it in the piss cup bag.

AJS: Right.

SS: And it would get there and it would come back inconclusive, they couldn't test it because the seal was broken, so I did it that way for about 14 or 15 urines in a row and then on like the last

AJS: Right.

SS: And...

AJS: From the Second Mile?

SS: Yeah, I think. I don't....I think it was through the Second Mile. I'm not really quite sure, but like I said, I just quit going around him and then I remember at one point in time I think Anthony Sasano or somebody wanted us to testify on Jerry's behalf.

AJS: Anthony Sasano would have been part of the prosecutor, so it would have been um, could have been his attorney, Joe Amendola or?

SS: I don't know to be honest.

AJS: Right.

SS: I just remember something being said that he wanted us, wanted me and my brother to testify on his behalf and say that he wasn't that type of a person.

AJS: Right, right, so....

SS: That just like really fucked me up mentally, then. Like how could he fucking do something like that knowing that he fucking did shit to me.

AJS: Right.

SS: So then I just got into drugs even more. And then started getting into legal trouble, started selling drugs to support my habit and make money at the same time, couldn't really keep jobs because I was getting high for awhile and then I'd always, like, I'd work for awhile and then I'd just find myself wanting to call off work to get high all the time and lay around and sell drugs.

AJS: Right.

SS: And started like got my first drug bust and there was always like doubt like people thought that there was an issue like something happened to me, but I always denied it.

AJS: Right.

SS: Even like the judges, my judge always asked like because my mom would write letters to the judge saying that she thought there was something there or she thought that something had happened to me from him but I always denied it and the judge even asked me, "did anything happen because if something happened, now's the time to do something about it".

AJS: Right.

three they ended up testing them and I blew the levels of the opiates through the roof and they had never seen that high of a level before on a drug test.

AJS: Right.

SS: And they sent me back to jail and they told me that they were going to send me to rehab and I ended up getting booted off the program and got transferred back to Blair County Prison from state prison after I maxed it out, but they put a bench warrant on me before my max out day which allowed them to revoke and resentence me again. They gave me 11 ½ to 23 months in the county. I didn't my 11 ½ months, got out May 30, 2017 and I was out for 23 days, I relapsed within like the first 2 days and I failed a drug test for Suboxone three weeks later. I only did it twice and I failed a drug test three weeks later for it and they were going to let it go and then they agreed to let me do the barbital shot and I agreed to it.

AJS: Do you need the room?

Third Party: Do you mind if we move you? I'm sorry.

INTERVIEW WITH S\_\_\_\_\_ S\_\_\_\_\_  
PART II

AJS: Alright, so S\_\_\_\_\_, we're going to go back over parts of the interview. This time it's just you and me and we're in a different room, um, is it okay if I continue to record you?

SS: Yes.

AJS: And um, you felt uncomfortable, you started by saying you felt uncomfortable because Jill was in the room for most of it or some of it, um, and so when we were talking about the sex acts...

SS: I just felt embarrassed because of a female and...

AJS: Okay.

SS: ...like actually fully going into it with everything with anybody. I've talked to her about some things but not everything.

AJS: Right. Well, I mean that's fine so I think that's why it's good that we're having a few minutes by ourselves. So let's go back to the shower, um, so we've already talked about the snapping of the towels and groping you in the shower, um, so you were just about to talk to me about the shower head.

SS: He put soap on like my head and on my back and washed my back and then lifted me up like under the shower head and like let like all the soap run off and then like he grabbed my ass, slapped my ass, groped my penis and I don't recall him ever like making me grab his. I don't know, like I just remember seeing an erection in the shower like while he had me lifted up.

AJS: Do you recall feeling his penis while he had you lifted up?

SS: Once or twice, yeah.

AJS: Right.

SS: I remember feeling it.

AJS: And was that around where your butt was?

SS: Yeah.

AJS: Okay, um, and do you recall whether he ever penetrated you or attempted to penetrate you.

SS: I don't think so.

AJS: How about attempt it?

SS: I don't recall. I mean....

AJS: Right.

SS: ...it could've, like I just remember of like feeling it around that area.

AJS: Right.

SS: But I don't remember him penetrating, I don't think....

AJS: Okay.

SS: He might've tried. I just like sort of like felt uncomfortable.

AJS: Right. On feeling...I can't imagine. Um, and, in, did, I want to go back over the oral stuff, um, do you recall whether he put his mouth around your penis at any point or whether he wanted....

SS: Just like blowing on my legs and my inner thighs, I mean, I had shorts on. I had the basketball shorts on, or the gym, whatever you want to call them, gym shorts, whatever he gave me.

AJS: Right.

SS: Uh, I remember getting like presents from him.

AJS: Right.

SS: Like sweat suit type things.

AJS: Yep.

SS: New shoes.

AJS: Right, right.

SS: Blowing on my stomach down towards my waistline and like he pulled my pants like kind of down like towards like my penis area but not fully down and just blowing there and then he groped by penis.

AJS: Right.

SS: And like I'd pull his hand away like whenever he grabbed my penis.

AJS: Do you ever remember him masturbating?

SS: No, I don't.

AJS: Right, okay. Um, in the showers, do, so in the showers, you would've felt, he soaped you up and he put your head to the shower head and his penis you felt um, near your anus, you're not sure whether he penetrated you, but it was, or tried to, um, and do you...

SS: I just remember it being really uncomfortable and I just wanted to leave the locker room and I ended up walking out after he put me down.

AJS: Right. Do you, do you if it physically, you were physically in pain.

SS: No.

AJS: Okay, um, and do you, um, uh, do you recall um, sort of feeling his, his unclothed penis against you at any other time in any other context?

SS: No, just like in his shorts.

AJS: How about when he laid in bed with you, um, when, uh at the camps, do you, is there more to that with, I thought I recall you telling me that there was a time when your brother was some place and Jerry was in the shower and came out and you were in the same room together, um, and before your brother came back....I might be mixing something up, but, um....

SS: No, I don't remember that.

AJS: That's not ringing a bell?

SS: He just, my brother wasn't in like the same part of the dormitory, so I know...

AJS: Right

SS: I don't remember if Jerry stayed with me in my room that night or if he was in the next room over.

AJS: Right, but you recall him coming in?

SS: Yes.

AJS: And then trying to do...

SS: And groping me and...

AJS: Right.

SS: ...doing like all the normal like stuff that he'd do like blowing on my stomach down towards like my penis and my inner thighs and groping my penis a couple different times and I'd feel his like erection in his pants.

AJS: Right.

SS: Like he'd pull me on top of him and I'd just feel his erection getting hard.

AJS: Right, right. And you were wearing the shorts that he gave your or?

SS: Yeah.

AJS: Right.

SS: I think it said Second Mile on it or something or I think we had a couple different pairs.

AJS: Right.

SS: I think we got one from every camp.

AJS: Right, okay, alright, okay, um, is there anything else that you can think of that we should talk about? Any questions I should have asked that I haven't asked?

SS: Um, we talked about the football camps from when I left, from he groped me and I called home crying and wanted my mom to come get me.

AJS: Right.

SS: Penn State locker room...

AJS: And that was, that referred to that incident where he came into your room, he separated you from your brother, came into your room and lied in the bed with you and sexually assaulted you.

SS: Yeah, we talked about what he did to me mentally and then beginning of my drug addiction leading into legal issues because of my drug addiction. Basically, stealing like my childhood and...

AJS: Yep.

SS: ...up until the edge of now like I don't know who I am anymore, like he...

AJS: Right.

SS: Like he stole like my childhood from me, like I didn't have a life to grow up to.

AJS: Do you feel like you've addressed some of those issues here?

SS: Yeah, I mean some. Like, I mean, I'm still trying to like figure out like who I am, like I know like some hobbies that I used to love doing but I...

AJS: Right.

SS: ...don't know, like I'm still just trying to figure out who I am.

AJS: I mean this may be hard to talk about but sexually, your first sexual experiences were with, you know, a pedophile, with an abusive, you know, pedophile, who, who attached it to his pretend love, right? Um, I mean have you...

SS: All my sexual relationships have always been with like girls who were like not even worthy of anything...

AJS: Right.

SS: They were just like whatever, like...

AJS: So do you...

SS: ...I found myself taking advantage of girls and just sleeping with them and...

AJS: Do you feel like you'll ever, um, be able to have a healthy sexual life? I mean, is that something that you're....

SS: I mean, I do to an extent, but like all of my relationships, like I always find myself getting like to attached to them and wanting to constantly be around them and...

AJS: You know, that's probably something Jerry picked up on in terms of why you were vulnerable to him. I'm just making an observation, but that is potentially part of his recipe. Um, well, I mean, I'm gonna turn this off.

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*Attorneys for Plaintiff*

MARIANNE S. [REDACTED] as the Administratrix of the  
ESTATE OF S. [REDACTED] S. [REDACTED] Deceased, and  
M. [REDACTED] S. [REDACTED] and MARIANNE S. [REDACTED],  
Husband and Wife  
c/o Spence, Custer, Saylor, Wolfe & Rose, LLC  
1067 Menoher Boulevard  
Johnstown, Pennsylvania 15905

Plaintiffs,

v.

GERALD A. SANDUSKY  
SCI – Laurel Highlands  
5706 Glades Pike  
Somerset, Pennsylvania 15501

and

THE SECOND MILE  
1402 South Atherton Street  
State College, Pennsylvania 16901

and

JACK RAYKOVITZ and KATHERINE  
GENOVESE a/k/a KATHERINE BERNECKER,  
Husband and Wife  
714 Rosslyn Road  
Boalsburg, Pennsylvania 16827-1903

Defendants.

COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

CIVIL ACTION

AUGUST TERM, 2020

No. 200803005

JURY TRIAL DEMANDED

## **COMPLAINT IN CIVIL ACTION**

NOW COMES, the Plaintiffs, Marianne S. [REDACTED] as the Administratrix of the Estate of S. [REDACTED] M. S. [REDACTED] Deceased, and M. S. [REDACTED] and M. S. [REDACTED], Husband and Wife, by and through their attorneys, Spence, Custer, Saylor, Wolfe & Rose, LLC, and files this Complaint in Civil Action:

## Parties

5. The Defendant, Katherine Genovese a/k/a Katherine Bernecker ("Ms. Genovese"), is an adult individual and resident of the Commonwealth of Pennsylvania with a residential address at 714 Rosslyn Road, Boalsburg, Centre County, Pennsylvania 16827. At all times relevant hereto, Ms. Genovese was married to her husband, Jack Raykovitz. Ms. Genovese is sued in her individual capacity.

6. At all times relevant hereto, Sandusky was an actual, apparent, and/or ostensible agent, servant, and/or employee of The Pennsylvania State University ("Penn State"). To wit, Sandusky was employed by Penn State as an assistant coach and longtime Defensive Coordinator of the Penn State football program, was a professor of physical education, and was thereafter appointed and/or granted status as professor emeritus.

7. At all times relevant hereto, Sandusky was an actual, apparent, and/or ostensible agent, servant, and/or employee of The Second Mile. To wit, Sandusky was the founder of, and a principal in, The Second Mile.

8. At all times relevant hereto, Mr. Raykovitz was an actual, apparent, and/or ostensible agent, servant, and/or employee of The Second Mile. To wit, Mr. Raykovitz was employed as the President and Chief Executive Officer and/or Executive Director of The Second Mile.

9. At all times relevant hereto, Ms. Genovese was an actual, apparent, and/or ostensible agent, servant, and/or employee of The Second Mile. To wit, Ms. Genovese was employed as the Executive Vice President of The Second Mile.

#### Jurisdiction and Venue

10. This action arises under the laws of the Commonwealth of Pennsylvania and is within the subject matter jurisdiction of the Court of Common Pleas of Philadelphia County, Pennsylvania.

11. The Second Mile and Sandusky regularly conducted business within Philadelphia County, Pennsylvania, such that personal jurisdiction and venue are proper in the Court of Common Pleas of Philadelphia County, Pennsylvania.

12. The acts giving rise to this lawsuit occurred, in part, in Philadelphia County, Pennsylvania, such that personal jurisdiction and venue are proper in the Court of Common Pleas of Philadelphia County, Pennsylvania.

#### Factual Background

13. In or around 1969, Sandusky was hired by Penn State as an assistant coach of its football team, serving in various roles including defensive line coach and linebacker coach.

14. Sandusky was promoted to Defensive Coordinator in 1977 and, in that same year, Sandusky established and/or founded The Second Mile in State College, Centre County, Pennsylvania.

15. During his time as an agent, servant, and/or employee of Penn State and The Second Mile, Sandusky sexually assaulted numerous young children, which was enabled by the negligent oversight and/or intentional mismanagement of Sandusky by Penn State and The Second Mile.

16. The aforementioned sexual assaults of young children by Sandusky began, were discovered, and persisted, throughout the 1970s.

17. Sandusky's interest in, and propensity to, shower with young children, seclude himself with young children, and sexually assault young children, was known, or should have been known, to Penn State and The Second Mile.

18. In May 1998, Sandusky sexually assaulted a young boy in the showers of the Louis and Mildred Lasch Football Building ("Lasch Building") on Penn State's University Park campus.

19. The young boy's mother promptly reported the sexual abuse to the University Police Department and an investigation was initiated with regard to Sandusky's improper sexual contact with young children.

20. Gary C. Schultz ("Schultz"), Penn State's then-Senior Vice President for Finance and Business/Treasurer of the Board of Trustees of the Pennsylvania State University, was informed of investigation and notified Penn State's then-President/Secretary of the Board of Trustees of the Pennsylvania State University, Graham B. Spanier ("Spanier"), and Penn State's then-Athletic Director, Timothy M. Curley ("Curley"), of the investigation.

21. Shortly after the investigation began, Thomas R. Harmon, the then-Director of Police Services for the University Police Department ("Chief Harmon"), informed Schultz that the Penn State police were "going to hold off on making any crime log entry" relative to Sandusky sexually assaulting the young boy in the shower.

22. Around that same time, Curley "touched base with" the Head Football Coach, Joseph V. Paterno ("Paterno"), about Sandusky sexually assaulting the young boy.

23. In June 1998, detectives from the University Police Department interviewed Sandusky about the incident, and Sandusky admitted to hugging and touching the young boy in the shower and told the detectives that he had done similar things with other young children in the past. Sandusky admitted that his conduct was improper.

24. During the investigation, another young child victim of Sandusky was identified, but was not contacted, and reasonable actions were not taken by Penn State and/or The Second Mile to investigate these allegations of sexual abuse.

25. Despite what they learned during the investigation and Sandusky's aforementioned admissions, Penn State officials, including the University Police Department, merely suggested to Sandusky that he should refrain from showering with young children.

26. After the June 1998 meeting with Sandusky, Chief Harmon informed Schultz that officers "met discreetly" with Sandusky, that Sandusky admitted to showering with and touching the young boy, and that Sandusky admitted to showering with other children in the past. Schultz was further advised that the University Police Department was closing the investigation.

27. Around or about this time, Curley informed The Second Mile, Mr. Raykovitz, and Ms. Genovese of the investigation and the belief that Sandusky was sexually abusing young children.

28. In or around the beginning of 1998, Paterno informed Sandusky that he would not be the next head coach of the Penn State football team, and Paterno, Schultz, Curley, and Spanier began working with Sandusky to effectuate a retirement from coaching that was agreeable to both Sandusky and Penn State.

29. Ultimately, it was agreed that Sandusky would coach through the 1999 football season and then retire from his employment with the football program.

30. In June 1999, Curley delivered to Sandusky a letter outlining certain perquisites that Sandusky would enjoy upon his retirement. The perquisites were approved by Schultz and accepted by Sandusky.

31. Upon his retirement, and despite his admissions of sexually assaulting young children, Sandusky was, among other things: (1) paid a lump sum of One Hundred Sixty-Eight Thousand Dollars (\$168,000.00); (2) awarded four complimentary football season tickets, with the option to purchase four additional tickets, for the balance of his lifetime; (3) awarded two men's basketball season tickets and two women's basketball season tickets for the balance of his lifetime; (4) permitted to use, at no charge, a locker, weight rooms, fitness facilities, and training room in the East Area locker room complex for the balance of his

lifetime; (5) given a commitment from Penn State to collaborate with The Second Mile; and (6) was given an office and telephone.

32. In addition to the above-mentioned perquisites, Sandusky was granted and/or awarded *emeritus* status, which gave him complete access to Penn State's recreational and athletic facilities.

33. Furthermore, Sandusky was awarded a parking pass for his vehicle, internet access through Penn State, was listed in the faculty directory, was given faculty discounts at Penn State's bookstore, and was given education privileges at Penn State for himself and his dependents.

34. In December 1999, Sandusky invited a young boy to attend the Alamo Bowl in San Antonio, Texas, where Penn State was playing Texas A&M University. This would be Sandusky's last game as Defensive Coordinator of the football team.

35. During this trip to the Alamo Bowl, Sandusky sexually assaulted the young boy at the team hotel.

36. In the summer of 2000, S██████ S█████, then eight (8) years old, attended a summer camp sponsored by The Second Mile, which was held on Penn State's University Park campus. S██████ S█████ was introduced to Sandusky through The Second Mile.

37. During that summer camp, Sandusky began to groom S██████ S█████ to become a victim of his sexual assaults.

38. During that summer camp, Sandusky would, among other things, swim in the pool with S██████ S█████ and grope his genitalia.

39. Subsequent to that summer camp, Sandusky remained in close contact with S██████ S█████ and his family, and continued to groom S██████ S█████

40. In November 2000, just a few months after Sandusky began grooming S██████ S█████ to become a victim of his sexual exploits, a Penn State janitor observed Sandusky in

the showers of the Lasch Building with a young boy pinned up against the wall. The janitor observed Sandusky performing oral sex on the young boy.

41. That same night, a second janitor observed Sandusky and a young boy in the same shower, and watched them exit the shower together, holding hands.

42. The janitors reported this information to janitorial staff, and these events were discussed with a senior janitorial employee, who informed the janitors that they could report the incidents to police.

43. However, the janitorial staff was afraid to report the incidents because of the power possessed by Paterno, the excessive influence Paterno had over Penn State, and the reprisal the janitors were sure to face from the Athletics Department at Penn State.

44. In February 2001, graduate assistant football coach Michael McQueary ("McQueary") observed Sandusky raping a young boy in the showers of the Lasch Building.

45. McQueary informed his immediate supervisor, Paterno, that he witnessed Sandusky raping the young boy.

46. Paterno informed Curley and Schultz that an assistant coach had witnessed Sandusky and a young boy engaging in "disturbing" behavior in the Lasch Building showers.

47. Schultz and Curley met with Spanier the next day to discuss McQueary's report of sexual abuse by Sandusky. Schultz, Curley, and Spanier agreed that Sandusky's actions were inappropriate and should not happen again. Spanier requested that Curley advise Sandusky that he must never again bring youth into the showers.

48. About a week later, Schultz and Curley met with McQueary to discuss the sexual abuse witnessed by McQueary. McQueary was unequivocal in his description of the events as "extremely sexual" with "some kind of intercourse" occurring.

49. On February 25, 2001, Schultz, Curley, and Spanier met to discuss a plan of action regarding Sandusky and the ongoing abuse of children at Penn State.

50. Schultz, Curley, and Spanier decided to (1) report the abuse to the Chair of the Board of The Second Mile; (2) report the abuse to the Department of Public Welfare; and (3) tell Sandusky to avoid bringing children alone into the Lasch Building.

51. Two days later, Curley e-mailed Schultz and Spanier and informed them that, after speaking with Paterno, Curley was now "uncomfortable" with the agreed upon plan, and decided that they should instead tell Sandusky about the known abuse and assist him in getting professional help.

52. In response, Spanier e-mailed Curley and Schultz and agreed with the new plan, believing it was "humane and reasonable" but acknowledging that they might "become vulnerable for not having reported" the sexual abuse.

53. Schultz e-mailed Spanier and Curley to express his concurrence with the new course of action, describing it as "more humane."

54. On or about March 5, 2001, Curley met with Sandusky to advise Sandusky of "the information we received" and that Penn State was "uncomfortable with the information" and that it would be reported to The Second Mile. Curley advised Sandusky that he was no longer permitted to bring young children to Penn State's athletic facilities.

55. On March 19, 2001, Curley met with Mr. Raykovitz and "shared the information" about Sandusky sexually assaulting young children.

56. Curley expressed his desire to "avoid publicity issues" and advised that The Second Mile should impress upon Sandusky that he was no longer permitted to bring young children to Penn State's University Park campus.

57. Mr. Raykovitz advised two Trustees from The Second Mile of the information disclosed by Curley, and they concluded the matter was a "non-incident for The Second Mile and there was no need to do anything further." Mr. Raykovitz spoke with Sandusky and, once again, Sandusky admitted to showering with young children.

58. Penn State and The Second Mile failed to make any report about the known sexual assault by Sandusky, and neither Penn State nor The Second Mile took any other action to limit Sandusky's access to their facilities, access to young children, or to report Sandusky's unlawful conduct to proper law enforcement authorities.

59. In the summer of 2001, S\_\_\_\_\_S\_\_\_\_\_ returned to summer camp sponsored by The Second Mile, which was once again held on Penn State's University Park campus.

60. Sandusky continued to sexually assault S\_\_\_\_\_, S\_\_\_\_\_, including while in the showers of the Lasch Building.

61. In August 2001, Sandusky sexually assaulted yet another young child in the showers of the Lasch Building.

62. Penn State and The Second Mile knew, or should have known, that they had a legal, moral, and ethical duty and obligation to report Sandusky's unlawful and improper sexual assaults of young children.

63. Despite the knowledge and information possessed by Penn State and The Second Mile of Sandusky's dangerous propensities and Sandusky's serial sexual abuse of young children, Penn State and The Second Mile continued to support Sandusky by permitting and/or encouraging Sandusky to bring young children to their facilities and/or functions.

64. Over the next several years, Sandusky continued to groom S\_\_\_\_\_, S\_\_\_\_\_, spend excessive time with S\_\_\_\_\_, S\_\_\_\_\_, purchase gifts for S\_\_\_\_\_, S\_\_\_\_\_, and his family, and sexually assault and abuse S\_\_\_\_\_, S\_\_\_\_\_.

65. Sandusky continued to invite S\_\_\_\_\_, S\_\_\_\_\_, to events hosted by Penn State and The Second Mile; invited S\_\_\_\_\_, S\_\_\_\_\_, to attend various sporting events as his guest, including Penn State, Pittsburgh Steelers, and Philadelphia Eagles football games; invited S\_\_\_\_\_, S\_\_\_\_\_, to attend football camps hosted by Penn State and The Second Mile on various

Penn State campuses; invited S█████ to his home in State College, Pennsylvania, where S█████ was encouraged to spend the night on numerous occasions; and invited S█████ S█████ to Penn State athletic facilities in order to exercise and spend time with Sandusky.

66. During these activities, Sandusky sexually assaulted S█████ S█████ in various manners.

67. Sandusky's sexual assault of S█████ S█████ and other young children, continued for many years.

68. Despite the knowledge and information possessed by Penn State and The Second Mile of Sandusky's dangerous propensities and Sandusky's serial sexual abuse of young children, Sandusky was permitted and/or encouraged to bring young children, including S█████ S█████ into the athletic facilities and showers, where he perpetuated the sexual assaults.

69. In or around 2008, Sandusky was banned from being present at a school district in Clinton County, Pennsylvania due to reports of Sandusky sexually assaulting a young student of the school district.

70. Penn State and The Second Mile knew, or should have known, that the action taken by the school district prohibiting Sandusky's presence at the school district resulted from reports of sexual assaults of young children.

71. Penn State and The Second Mile failed to make any report about the known sexual assaults by Sandusky, and neither Penn State nor The Second Mile took any other action to limit Sandusky's access to their facilities, access to young children, or to report Sandusky's unlawful conduct to proper law enforcement authorities.

72. Had Penn State and/or The Second Mile undertaken a proper investigation or taken any reasonable or prudent steps after learning of Sandusky's unlawful conduct, as set

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forth above, Penn State and The Second Mile would have learned that Sandusky had been sexually assaulting young children since the 1970s.

73. Had Penn State and/or The Second Mile undertaken a proper investigation or taken any reasonable or prudent steps after learning of Sandusky's unlawful conduct, as set forth above, Penn State and The Second Mile would have prevented many children after 2001 and after 2008 from sexual abuse by Sandusky.

74. Penn State and The Second Mile knew, or should have known, that they had a legal, moral, and ethical duty and obligation to investigate the allegations of Sandusky's unlawful and improper sexual assaults of young children.

75. Penn State and The Second Mile knew, or should have known, that they had a legal, moral, and ethical duty and obligation to report Sandusky's unlawful and improper sexual assaults of young children.

76. In or around early 2009, the Commonwealth of Pennsylvania Office of Attorney General initiated an investigation into Sandusky's unlawful sexual assaults of young children.

77. In November 2011, the Office of Attorney General filed a grand jury report charging Sandusky with numerous counts of various crimes related to his sexual abuse of young children.

78. On or about November 5, 2011, Sandusky was arrested.

79. On or about November 6, 2011, Curley and Schultz vacated their positions with Penn State after an emergency meeting with Penn State officials.

80. On or about November 7, 2011, Curley and Schultz were arraigned on charges of making false statements to the grand jury and failing to report abuse of a child.

81. On or about November 9, 2011, the Penn State Board of Trustees terminated Spanier and Paterno from their employment with Penn State.

82. In or around June 2012, Sandusky was convicted of numerous felonies related to his sexual assault of young boys and sentenced to approximately thirty (30) years to sixty (60) years incarceration.

83. Spanier, Curley, and Schultz were all convicted of child endangerment for their actions and/or inactions related to Sandusky's sexual abuse of young children.

84. As a direct and proximate result of the sexual abuse suffered by S██████ S█████ at the hands of Sandusky, S██████ S█████ began to utilize drugs and alcohol in order to manage and/or cope with the physical and emotional trauma, physical and mental pain, and other damages and injuries, as set forth above.

85. As a direct and proximate result of the negligent, reckless, willful, outrageous and/or careless actions and/or inactions of Penn State and The Second Mile, and their agents, servants, and employees – including Mr. Raykovitz, Ms. Genovese, Spanier, Schultz, Curley, and Paterno – as set forth more fully herein, S██████ S█████ began to utilize drugs and alcohol in order to manage and/or cope with the physical and emotional trauma, physical and mental pain, and other damages and injuries, as set forth above.

86. S██████ S█████ continued to utilize drugs and alcohol to manage and/or cope with the damages and/or injuries he suffered, as set forth above, until around or about September 4, 2018, when he overdosed on heroin and died.

87. The death of S██████ S█████ is a direct and proximate result of the sexual abuse he suffered at the hands of Sandusky.

88. The death of S██████ S█████ is a direct and proximate result of the negligent, reckless, willful, outrageous and/or careless actions and/or inactions of Penn State and The Second Mile, and their agents, servants, and employees – including Mr. Raykovitz, Ms. Genovese, Spanier, Schultz, Curley, and Paterno – as set forth more fully herein.

89. As a direct and proximate result of the negligence, recklessness, willfulness, outrageousness and/or carelessness of Penn State, The Second Mile, and Sandusky, and their agents, servants, and employees – including Mr. Raykovitz, Ms. Genovese, Spanier, Schultz, Curley, and Paterno – S█████ S█████ suffered numerous injuries and damages, including:

- a. Anxiety;
- b. Depression;
- c. Severe pain and suffering;
- d. Medical expenses;
- e. Loss of past earnings, maintenance, and other similar losses;
- f. Loss of future earnings, maintenance, and other similar losses;
- g. Pecuniary losses;
- h. Loss of services and/or support;
- i. Severe mental anguish;
- j. Severe emotional distress;
- k. Embarrassment and inconvenience;
- l. Loss of self-esteem;
- m. Disgrace and humiliation;
- n. Loss of the pleasures of life;
- o. Severe drug addiction; and
- p. Loss of his life.

90. As a direct and proximate result of the negligent, reckless, willful, outrageous and/or careless actions and/or inactions of Penn State, The Second Mile, and Sandusky, and their agents, servants, and employees – including Mr. Raykovitz, Ms. Genovese, Spanier,

Schultz, Curley, and Paterno – as set forth more fully herein, S█████ S█████ claims the full measure of damages allowable under the laws of the Commonwealth of Pennsylvania.

Count I – Assault

42 Pa.C.S.A. § 8301 – Wrongful Death Act

M██████████ S██████████, as the Administratrix of the Estate of  
S██████████ S██████████ Deceased

v.

Gerald A. Sandusky

91. Plaintiff hereby incorporates by reference Paragraphs 1 through 90 as if the same were more fully set forth herein.

92. Sandusky, through his actions, as set forth above, intended to put S██████████ in reasonable and immediate apprehension of a harmful or offensive conduct, and did in fact cause such apprehension.

93. Sandusky, through his actions set forth above, intended and/or caused S██████████ S██████████ to suffer an apprehension that a harmful or offensive conduct was imminent.

94. As a result of the negligent, reckless, willful, outrageous and/or careless acts or omissions of Sandusky, S██████████ S██████████ suffered the injuries and damages set forth above, for which, under the law, he is entitled to recover damages.

95. The conduct of Sandusky, as set forth more fully herein, was willful, outrageous, beyond the bounds of decency, and taken with a reckless indifference to the interests of S██████████ S██████████ such that his conduct shocks the conscious, so as to warrant the imposition of punitive damages.

WHEREFORE, the Plaintiff, M██████████ S██████████, as the Administratrix of the Estate of S██████████ S██████████, Deceased, demands judgment and damages in her favor in an amount in

excess of the limits of compulsory arbitration, including punitive damages, and such other relief as this Honorable Court may deem proper and just. **JURY TRIAL DEMANDED.**

**Count II – Assault**

**42 Pa.C.S.A. § 8302 – Survival Act**

**Margaret S. [REDACTED] as the Administratrix of the Estate of  
S. [REDACTED], S. [REDACTED] Deceased**

v.

**Gerald A. Sandusky**

96. Plaintiff hereby incorporates by reference Paragraphs 1 through 95 as if the same were more fully set forth herein.

97. Sandusky, through his actions, as set forth above, intended to put S. [REDACTED] S. [REDACTED] in reasonable and immediate apprehension of a harmful or offensive conduct, and did in fact cause such apprehension.

98. Sandusky, through his actions set forth above, intended and/or caused S. [REDACTED] S. [REDACTED] to suffer an apprehension that a harmful or offensive conduct was imminent.

99. As a result of the negligent, reckless, willful, outrageous and/or careless acts or omissions of Sandusky, S. [REDACTED] S. [REDACTED] suffered the injuries and damages set forth above, for which, under the law, he is entitled to recover damages.

100. The conduct of Sandusky, as set forth more fully herein, was willful, outrageous, beyond the bounds of decency, and taken with a reckless indifference to the interests of S. [REDACTED] S. [REDACTED] such that his conduct shocks the conscious, so as to warrant the imposition of punitive damages.

WHEREFORE, the Plaintiff, Margaret S. [REDACTED] as the Administratrix of the Estate of S. [REDACTED] S. [REDACTED], Deceased, demands judgment and damages in her favor in an amount in

excess of the limits of compulsory arbitration, including punitive damages, and such other relief as this Honorable Court may deem proper and just. **JURY TRIAL DEMANDED.**

**Count III – Battery**

**42 Pa.C.S.A. § 8301 – Wrongful Death Act**

M\_\_\_\_\_ S\_\_\_\_\_, as the Administratrix of the Estate of  
S\_\_\_\_\_, Deceased

v.

**Gerald A. Sandusky**

101. Plaintiff hereby incorporates by reference Paragraphs 1 through 100 as if the same were more fully set forth herein.

102. Sandusky, through his actions, as set forth above, caused S\_\_\_\_\_, S\_\_\_\_\_, to suffer a harmful or offensive contact, as set forth more fully herein.

103. Sandusky, through his actions, as set forth above, intended to cause S\_\_\_\_\_, S\_\_\_\_\_, to suffer such a harmful or offensive contact, as set forth more fully herein.

104. Sandusky, through his actions, as set forth above, caused S\_\_\_\_\_, S\_\_\_\_\_, to suffer an apprehension that a harmful or offensive contact was imminent.

105. As a result of the negligent, reckless, willful, outrageous and/or careless acts or omissions of Sandusky, S\_\_\_\_\_, S\_\_\_\_\_, suffered the injuries and damages set forth above, for which, under the law, he is entitled to recover damages.

106. The conduct of Sandusky, as set forth more fully herein, was willful, outrageous, beyond the bounds of decency, and taken with a reckless indifference to the interests of S\_\_\_\_\_, S\_\_\_\_\_, such that his conduct shocks the conscious, so as to warrant the imposition of punitive damages.

WHEREFORE, the Plaintiff, M\_\_\_\_\_ S\_\_\_\_\_, as the Administratrix of the Estate of S\_\_\_\_\_, S\_\_\_\_\_, Deceased, demands judgment and damages in her favor in an amount in

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excess of the limits of compulsory arbitration, including punitive damages, and such other relief as this Honorable Court may deem proper and just. **JURY TRIAL DEMANDED.**

**Count IV – Battery**

**42 Pa.C.S.A. § 8302 – Survival Act**

**Margaret S., as the Administratrix of the Estate of  
S. S., Deceased**

v.

**Gerald A. Sandusky**

107. Plaintiff hereby incorporates by reference Paragraphs 1 through 106 as if the same were more fully set forth herein.

108. Sandusky, through his actions, as set forth above, caused S. S. to suffer a harmful or offensive contact, as set forth more fully herein.

109. Sandusky, through his actions, as set forth above, intended to cause S. S. to suffer such a harmful or offensive contact, as set forth more fully herein.

110. Sandusky, through his actions, as set forth above, caused S. S. to suffer an apprehension that a harmful or offensive contact was imminent.

111. As a result of the negligent, reckless, willful, outrageous and/or careless acts or omissions of Sandusky, S. S. suffered the injuries and damages set forth above, for which, under the law, he is entitled to recover damages.

112. The conduct of Sandusky, as set forth more fully herein, was willful, outrageous, beyond the bounds of decency, and taken with a reckless indifference to the interests of S. S. such that his conduct shocks the conscious, so as to warrant the imposition of punitive damages.

WHEREFORE, the Plaintiff, M. S., as the Administratrix of the Estate of S. S., Deceased, demands judgment and damages in her favor in an amount in

excess of the limits of compulsory arbitration, including punitive damages, and such other relief as this Honorable Court may deem proper and just. **JURY TRIAL DEMANDED.**

**Count V – Negligence**

**42 Pa.C.S.A. § 8301 – Wrongful Death Act**

**M\_\_\_\_\_ S\_\_\_\_\_ as the Administratrix of the Estate of  
S\_\_\_\_\_, Deceased**

v.

**Gerald A. Sandusky**

113. Plaintiff hereby incorporates by reference Paragraphs 1 through 112 as if the same were more fully set forth herein.

114. At all times relevant hereto, Sandusky, owed a duty to the minors entrusted to his care, including S\_\_\_\_\_, to provide a reasonably safe environment and to provide reasonable care and safety while under the care and/or supervision of The Second Mile, Mr. Raykovitz, and/or Ms. Genovese, and/or their agents, servants, and/or employees.

115. Sandusky actively solicited, and voluntarily accepted, the entrusted care of S\_\_\_\_\_, and, as such, owed S\_\_\_\_\_, a special duty of care to be protected from harm inflicted upon him by agents, servants, and/or employees of The Second Mile, Mr. Raykovitz, and Ms. Genovese, when S\_\_\_\_\_, attended the activities and/or functions of The Second Mile and Penn State and when S\_\_\_\_\_, was physically present upon the premises of Penn State and/or The Second Mile and/or at the functions of The Second Mile.

116. Sandusky knew, or should have known, that he possessed dangerous and exploitive propensities and/or that he was unfit for the supervision, care, and/or custody of minor children because of his sexual interest in children.

117. Sandusky knew, or should have known, that his failure to exercise reasonable control would result in harm to minor children, including S█████ S█████, as set forth more fully herein.

118. Sandusky knew, or should have known, that his failure to exercise reasonable control over and/or supervision of minor children at the functions of and/or present upon The Second Mile premises would result in harm to minor children, including S█████ S█████, as set forth more fully herein.

119. Sandusky breached the duties and/or obligations owed to individuals and minor children, including S█████ S█████, by engaging, or failing to engage, in some or all of the following particulars, including:

- a. Failing to protect and/or safeguard minor children, including S█████ S█████, from sexual assaults;
- b. Failing to take actions which would protect and/or safeguard minor children, including S█████ S█████, from sexual assaults;
- c. Failing to caution, notify, and/or advise to individuals under the care of Penn State and/or The Second Mile, including S█████ S█████, that he was a violent child sex offender;
- d. Failing to inform and/or warn relevant individuals of his history of sexual misconduct and child sex abuse;
- e. Affirmatively hiding and/or concealing his known history of sexual misconduct and child sex abuse;
- f. Ignoring, covering up, and/or concealing allegations of sexual abuse;
- g. Failing to create and enforce appropriate and adequate safety plans for protecting young children from abuse;
- h. Engaging in sexual acts with minor children, including S█████ S█████ and
- i. Assaulting, battering, and/or otherwise causing harmful contact to minor children, including S█████ S█████.

120. As a result of the negligence, recklessness, willfulness, outrageousness and/or carelessness on the part of Sandusky, S████ S████ has suffered the injuries and damages set forth herein.

121. The conduct of Sandusky, as stated more fully herein, was taken with a reckless indifference to the health and safety of S████ S████, such that Sandusky knew, or should have known, that his conduct was likely to cause death or substantial physical harm.

122. Sandusky knew, or should have known, that actively concealing his sexual abuse of young children was likely to result in harm to young children, including S████ S████, as set forth more fully herein.

123. Sandusky knew, or should have known, that the sexual abuse of young children, including S████ S████, was likely to result in substantial mental and physical harm, including death, to young children, including S████ S████.

124. As a result of the negligent, reckless, willful, outrageous and/or careless acts or omissions of Sandusky, S████ S████ suffered the injuries and damages set forth above, for which, under the law, he is entitled to recover damages.

125. The conduct of Sandusky, as set forth more fully herein, was willful, outrageous, beyond the bounds of decency, and taken with a reckless indifference to the interests of S████ S████, such that his conduct shocks the conscious, so as to warrant the imposition of punitive damages.

WHEREFORE, the Plaintiff, M████ S████, as the Administratrix of the Estate of S████, Deceased, demands judgment and damages in her favor in an amount in excess of the limits of compulsory arbitration, including punitive damages, and such other relief as this Honorable Court may deem proper and just. JURY TRIAL DEMANDED.

Count VI – Negligence

42 Pa.C.S.A. § 8302 – Survival Act

**M\_\_\_\_\_ S\_\_\_\_\_, as the Administratrix of the Estate of  
S\_\_\_\_\_, Deceased**

v.

**Gerald A. Sandusky**

126. Plaintiff hereby incorporates by reference Paragraphs 1 through 125 as if the same were more fully set forth herein.

127. At all times relevant hereto, Sandusky, owed a duty to the minors entrusted to his care, including S\_\_\_\_\_, S\_\_\_\_\_, to provide a reasonably safe environment and to provide reasonable care and safety while under the care and/or supervision of The Second Mile, Mr. Raykovitz, and/or Ms. Genovese, and/or their agents, servants, and/or employees.

128. Sandusky actively solicited, and voluntarily accepted, the entrusted care of S\_\_\_\_\_, S\_\_\_\_\_, and, as such, owed S\_\_\_\_\_, S\_\_\_\_\_, a special duty of care to be protected from harm inflicted upon him by agents, servants, and/or employees of The Second Mile, Mr. Raykovitz, and Ms. Genovese, when S\_\_\_\_\_, S\_\_\_\_\_, attended the activities and/or functions of The Second Mile and Penn State and when S\_\_\_\_\_, S\_\_\_\_\_, was physically present upon on the premises of Penn State and/or The Second Mile and/or at the functions of The Second Mile.

129. Sandusky knew, or should have known, that he possessed dangerous and exploitative propensities and/or that he was unfit for the supervision, care, and/or custody of minor children because of his sexual interest in children.

130. Sandusky knew, or should have known, that his failure to exercise reasonable control would result in harm to minor children, including S\_\_\_\_\_, S\_\_\_\_\_, as set forth more fully herein.

131. Sandusky knew, or should have known, that his failure to exercise reasonable control over and/or supervision of minor children at the functions of The Second Mile and/or present upon The Second Mile premises would result in harm to minor children, including S█████ S█████, as set forth more fully herein.

132. Sandusky breached the duties and/or obligations owed to individuals and minor children, including S█████ S█████, by engaging, or failing to engage, in some or all of the following particulars, including:

- a. Failing to protect and/or safeguard minor children, including S█████ S█████, from sexual assaults;
- b. Failing to take actions which would protect and/or safeguard minor children, including S█████ S█████, from sexual assaults;
- c. Failing to caution, notify, and/or advise to individuals under the care of Penn State and/or The Second Mile, including S█████ S█████, that he was a violent child sex offender;
- d. Failing to inform and/or warn relevant individuals of his history of sexual misconduct and child sex abuse;
- e. Affirmatively hiding and/or concealing his known history of sexual misconduct and child sex abuse;
- f. Ignoring, covering up, and/or concealing allegations of sexual abuse;
- g. Failing to create and enforce appropriate and adequate safety plans for protecting young children from abuse;
- h. Engaging in sexual acts with minor children, including S█████ S█████, and
- i. Assaulting, battering, and/or otherwise causing harmful contact to minor children, including S█████ S█████.

133. As a result of the negligence, recklessness, willfulness, outrageousness and/or carelessness on the part of Sandusky, S█████ S█████ has suffered the injuries and damages set forth herein.

\* \* \* \*

JOHN ZIEGLER PRODUCTION

"WITH THE BENEFIT OF HINDSIGHT"

Episode Fourteen: Secret Agent Man

HOST: Liz Habib

\* \* \* \* \*

Release Date: April 10, 2021

PODCAST PARTICIPANTS:

John Ziegler  
AJ Dillen

*Hawk Court Reporting 814-661-3153*

1	<u>AUDIO CLIPS PLAYED</u>			
2	<u>Page/Line to Page/Line</u>			
3	22	17	24	7
4	36	15	38	11
5	43	22	51	1
6	60	17	61	6
7	64	13	65	3
8	67	17	69	14
9	71	2	74	19
10	80	20	84	13
11	96	19	97	8
12	99	22	101	2
13	108	2	108	14
14	109	20	112	20
15	115	16	116	21
16	122	17	125	10
17	129	5	129	19
18	137	5	138	7
19	139	6	144	7
20	149	12	152	16
21	157	4	160	14
22	167	5	167	21
23	172	13	173	10
24	180	17	186	22
25	208	5	210	13

*Hawk Court Reporting 814-661-3153*

1                   "WITH THE BENEFIT OF HINDSIGHT" PODCAST

2                   MR. BENZA: Well, AJ Dillen gained a lot from his  
3 years in The Second Mile. He thought Jerry Sandusky was  
4 a good man, who cared deeply for kids. When he heard  
5 the news of Jerry's arrest, he couldn't believe it. And  
6 like John Ziegler, he needed to know the truth, so he  
7 decided to play victim. Didn't seem that hard to do.

8                   I'm AJ Benza, and this is "With the Benefit of  
9 Hindsight," the true story of corruption, greed, and  
10 panic that brought down Penn State, its legendary coach,  
11 and an alleged monster. This week we go undercover with  
12 Liz, Zig, and fake accuser, AJ Dillen.

13                  Dillen's three-year sting operation proves just  
14 how easy it was to make a claim and just how far a  
15 small-town DUI attorney was willing to go to refabricate  
16 that claim. Here's Liz Habib, and "With the Benefit of  
17 Hindsight" Episode 14, Secret Agent Man.

18                  MS. HABIB: Welcome back to "With the Benefit of  
19 Hindsight." I'm Liz Habib, and I'm really looking  
20 forward to this episode. We're calling it Secret Agent  
21 Man, because that's exactly what our friend, AJ Dillen,  
22 became when he decided he had to know the truth about  
23 the victims' stories.

24                  AJ went undercover and became an accuser himself.  
25 His story was outrageous, literally conjured up on the

1 spot, but that wouldn't stop the lawyer who represented  
2 nine Sandusky victims from taking this case.

3 So, John, where should we start?

4 MR. ZIEGLER: Well, hopefully, people have been  
5 listening to the podcast all along and remember that AJ  
6 Dillen was interviewed by us previously because he  
7 attended the Sandusky trial, and he confronted Matt  
8 Sandusky after day one of the trial, and Matt Sandusky  
9 made it clear that he did not believe that his father  
10 was guilty or that any of these guys were telling the  
11 truth.

12 And so AJ was quite shocked when, soon after  
13 that, Matt publicly becomes a victim. And AJ, who knew  
14 Jerry Sandusky since he was a kid, was a Second Mile kid  
15 and his family was close to the Sandusky family, knew  
16 very, very strongly that Jerry Sandusky was, in fact,  
17 innocent, and AJ has been doing everything he possibly  
18 can over the last several years to try to get to the  
19 truth of this.

20 In our last episode, we heard audio from Ira  
21 Lubert, the man who basically runs the Penn State Board  
22 of Trustees, who gave out the money for all the  
23 settlements, where AJ is the one who does the interview  
24 with Ira Lubert, where Ira makes several remarkable  
25 admissions, including the fact that of the people he

1 gave over \$120 million to, "Some were not victims,"  
2 that's a quote, "Some were on the gravy train, some  
3 exaggerated," and that audio comes from AJ.

4 So, AJ is a little bit like the Forrest Gump of  
5 this case, where he keeps popping up in different ways.  
6 But he pops up in the most dramatic way because of the  
7 sting operation that you already alluded to, that comes  
8 about under really bizarre circumstances, which we'll  
9 get into when we talk to him. But it lasted for about  
10 three years and never was intended to get any money, it  
11 was never intended to do anything but to test the  
12 system, to get to the truth, and boy, did it ever. It  
13 came about on a whim, and it has resulted in some of the  
14 most dramatic evidence that this entire process was  
15 inherently and fundamentally broken and not reliable.

16 And so the story you're going to hear today is  
17 mind-blowing even by the standards of this crazy case,  
18 and this remarkable podcast, and so I'm really looking  
19 forward to AJ finally, after all these years, for the  
20 first time being able to tell his full story, with the  
21 audio that he captured during the sting operation, audio  
22 of both Andrew Shubin, the key lawyer in the case, and  
23 Cynthia Macnab, the key therapist in the case, who gave  
24 therapy to at least nine or ten Sandusky accusers, all  
25 of whom were represented by Andrew Shubin and his

1 umbrella law firm, Ross Feller Casey.

2           Because this really drives a stake in the heart  
3 of the process that produced these accusers of Jerry  
4 Sandusky. And AJ has done a remarkable job of  
5 proving -- and he's been a real pain in the ass to deal  
6 with for all these years, and I'm sure he would say the  
7 same about me.

8           MS. HABIB: Yes.

9           MR. ZIEGLER: But we're in for a treat on this  
10 one today, so let's talk to AJ.

11           MS. HABIB: All right, welcome back to AJ Dillen,  
12 who is our fake accuser. And hi, AJ, how are you today?

13           MR. DILLEN: Hi. I'm doing well.

14           MS. HABIB: All right. So, you've done a number  
15 of things. You've talked to a lot of people, and you've  
16 also talked to Ira Lubert. And when you got in to talk  
17 to Ira, you were talking about the wrestling program, of  
18 which he is a big supporter, built a big wrestling  
19 program, but somehow during that conversation, you got  
20 Ira to talk about Jerry Sandusky. What went on?

21           MR. DILLEN: It started like you had said, it  
22 started about my grandfather and then moved to Jerry  
23 Sandusky and Paterno, because Ira didn't know that I'm a  
24 former Second Miler when I did that interview, so I kind  
25 of just transitioned the conversation in that direction.

1 Because to me, it was -- he was one of the biggest  
2 people involved in this ordeal from Penn State's  
3 perspective, so I was hoping he would give me his  
4 perspective. And he didn't disappoint me in delivering,  
5 that's for sure.

6 MR. ZIEGLER: Now, AJ, just to be clear, before  
7 we get to the substance, which we played these clips in  
8 the last episode of the podcast, I just want people to  
9 know what the situation was. He knew he was being  
10 recorded, correct?

11 MR. DILLEN: Correct.

12 MR. ZIEGLER: And this was for an interview  
13 about, again, about Penn State wrestling, which he has  
14 been a huge part of that program for a very long time,  
15 and you have a family connection to that. I'm curious.  
16 If he knew he was being recorded, which I believe is the  
17 case because you've been trustworthy with me for many,  
18 many years that we've dealt with each other on this, why  
19 is the audio so terrible on that?

20 MR. DILLEN: Well, I had it in my pocket when I  
21 went in there, and then I asked him if I could record  
22 and he says yeah, because I told him I have a tough time  
23 memorizing things, because I do have a disability, a  
24 learning disability. So he was okay with it, and I just  
25 left it in my pocket.

1           MR. ZIEGLER: But to be clear, he knew he was  
2 being recorded?

3           MR. DILLEN: Yes, he knew.

4           MR. ZIEGLER: Okay. All right, now, before we  
5 get to your remarkable saga as a purposely fake accuser  
6 in this case -- which Ira did not know that, correct?  
7 He did not know that you had been a fake accuser of  
8 Jerry Sandusky, right?

9           MR. DILLEN: No, I never told him I was the  
10 purposely fake accuser, and I didn't tell him I'm a  
11 former Second Miler.

12          MR. ZIEGLER: Okay. When we played these clips  
13 in the last episode, as I've referenced, he says a  
14 couple of really remarkable things. The two basic  
15 points were that he refers to Joe Paterno and Graham  
16 Spanier and Curley and Schultz as great men who just  
17 made an error in judgment. What was your sense of him  
18 saying that and whether or not that makes any sense in  
19 your knowledge of the narrative?

20          Because you know, if you believe what Ira Lubert  
21 believes, that this was, you know, a 40-year pedophilia  
22 situation involving Jerry Sandusky, then, my gosh, you  
23 know, all of those four guys had to know something.

24          Did that strike you as odd, that he was so much  
25 praising of guys who he had fired and who had to have

1 been part of what would be some semblance of a coverup,  
2 at least according to the Freeh report? What did you  
3 make of that?

4 MR. DILLEN: Well, I made of it exactly kind of  
5 what he said. He said, you know, when I started talking  
6 to him about the case and transitioned that  
7 conversation, he's like, "There was no coverup," and I  
8 was like, "Well, I don't believe in a coverup or  
9 conspiracy."

10 And so my take on what he said is this: he did  
11 not look at this as somebody who most of the media has  
12 portrayed as would have to have been an individual that  
13 helped cover it up; he looked at it as a businessman.  
14 Because he goes, "You can't cost a company, or in this  
15 case the university, \$200 million and retain your  
16 position." And so he was looking at it from a business  
17 standpoint and what was in the best interest of the  
18 university at the time.

19 And I think the biggest realization I had -- and  
20 it hurt to realize it because it's not something you  
21 wanted to acknowledge -- is that he was right to fire  
22 those guys under the way in which his mind and his  
23 mentality towards the situation was.

24 MS. HABIB: I mean, by what you just said, this  
25 is kind of complicated maybe, but it was a business

1 transaction for him as part of the university, to keep  
2 this to a minimum, but it's a business transaction for  
3 everybody else, too, in this except for Jerry Sandusky,  
4 right?

5 MR. DILLEN: Right. Yeah, because that just --

6 MR. ZIEGLER: Okay, well --

7 MR. DILLEN: Oh, go ahead. Sorry.

8 MR. ZIEGLER: No, and -- well, that's an  
9 important point because there's two very different  
10 theories of how this all transpired, and Ira has taken a  
11 theory that, to me, is inherently contradictory and  
12 hypocritical to his belief, by the way, that, you know,  
13 these are four great managers who made an error in  
14 judgment.

15 That narrative that he has created in his mind  
16 doesn't make any sense. But the eureka moment of your  
17 interview with Ira is where you get him again --  
18 unfortunately, with very bad audio but it is clear what  
19 he said -- when you get him to say, with regard to those  
20 who he gave money to, "They're not all victims. Some  
21 were on the gravy train."

22 MS. HABIB: That blew my mind.

23 MR. ZIEGLER: Some exaggerated their stories.

24 What was your reaction in the room when he says that?

25 MR. DILLEN: Well, it's interesting because, of

1 course, this interview takes place long after I have  
2 this conversation with Shubin, but Shubin says himself  
3 in one of the audios, he goes, "Some of these claims  
4 were past the statute of limitations, like Matt  
5 Sandusky, but Penn State paid them anyways because it  
6 would have been more costly to fight them in court, even  
7 though legally Penn State could have told Matt Sandusky  
8 to," pardon my French, but "go fuck himself." And  
9 that's Shubin's words, essentially.

10 MR. ZIEGLER: But --

11 MR. DILLEN: And so I think that's exactly what  
12 Ira did, And that's what he said, too. He said that,  
13 you know, to fight these, to litigate these in court  
14 would have cost us more money than just to settle them.  
15 So yeah, there were people on the gravy train.

16 MS. HABIB: That's just so, so -- that's  
17 terrible, isn't it? But isn't that the way of  
18 corporations and business?

19 MR. DILLEN: Yeah.

20 MR. ZIEGLER: Yeah. But, Liz, what I don't get  
21 is he's willing to admit in an interview -- now, he may  
22 not have thought it was going to be publicly  
23 disseminated, and he was right, because the media  
24 censorship of this issue is universal in that no one  
25 wants to touch it, but he's willing to admit in an

1 interview that he gave money to people who were not  
2 accusers, yet he can't wrap his mind around the idea  
3 that if some, and maybe a lot of those who came to him  
4 with stories, were lying, that they could all be lying.  
5 I mean, if one is willing to do it for money, why can't  
6 they all?

7 MS. HABIB: Well, I don't know that he couldn't.  
8 We don't know because we're not questioning him, but  
9 look, there were guilty verdicts And that's all he has  
10 to go off of, there were guilty verdicts.

11 MR. ZIEGLER: Right, right.

12 MR. DILLEN: Correct.

13 MS. HABIB: And so now he's got to mitigate is  
14 what we've heard now, right?

15 MR. ZIEGLER: Right. Okay, that's all fair, and  
16 that's clearly coloring his perception, and he's also  
17 very, very invested in not being wrong here, because  
18 he's part of why -- he's a huge part of why Joe Paterno  
19 got fired, Graham Spanier got fired. You know, he paid  
20 out all this money. He's deeply invested in this not  
21 being bullshit, and so his mind is going to be very  
22 hesitant to go there.

23 Although I will say, AJ, he at least seemed  
24 somewhat open-minded, right, to the idea that Jerry  
25 could be innocent, which again is unfathomable to me --

1 MS. HABIB: It blows my mind.

2 MR. ZIEGLER: -- because he's the guy privy to  
3 more information than anyone else on the planet, yet he  
4 still thinks it's at least possible.

5 Although I have to say, AJ, you didn't do a great  
6 job of trying to make the argument. In listening to the  
7 audio, I was ripping my hair out. Of course, I've been  
8 ripping my hair out with my interaction with you for  
9 about eight years, and -- but, you know, why were you so  
10 soft on him? Why did you not push back harder against  
11 him when he made the argument that Jerry must be guilty?

12 MR. DILLEN: I'm probably wrong for this, but  
13 respect.

14 MR. ZIEGLER: Ah.

15 MS. HABIB: You're not wrong. It's very  
16 difficult to do with a person in that type of position,  
17 AJ, just to be fair to you.

18 MR. ZIEGLER: Okay, that's fair.

19 MS. HABIB: I mean, you're -- John is a dog, man,  
20 he'll go at it, right?

21 MR. DILLEN: Yeah.

22 MS. HABIB: But there are journalists making a  
23 lot more money than John and I sitting here right now,  
24 who cannot handle this situation, and you are not --  
25 you're doing this out of your own drive and desire, and

1 you're not trained to do this.

2 MR. DILLEN: Right.

3 MS. HABIB: So to be fair -- and this is a good

4 question, John -- why didn't you? It seems easy.

5 You're sitting in the face of somebody, going, "Why

6 didn't you" -- John, I haven't been able to do it at

7 times.

8 MR. ZIEGLER: Liz, I get it, and I'm glad you  
9 made that point, and, AJ, I totally understand the  
10 intimidation factor. But I guess here's -- and this  
11 leads us to the fake accuser story.

12 I guess my frustration with you, AJ, is that  
13 sometimes you're James Bond and sometimes you're Barney  
14 Fife.

15 MR. DILLEN: That's probably correct. That  
16 sounds about right.

17 MR. ZIEGLER: So you agree. You agree at times  
18 you're James Bond and sometimes you're Barney Fife?

19 MR. DILLEN: Yeah, yeah.

20 MR. ZIEGLER: Okay.

21 MS. HABIB: Just keep the James Bond parts. I  
22 like that part, just keep in mind.

23 MR. ZIEGLER: All right, so let's talk about the  
24 James Bond part, okay? So I want to go back to 2014,  
25 and this is after Dottie Sandusky and me have gone on

1 "The Today Show" in an interview with Matt Lauer and did  
2 a CNN interview. But it's clear we're not getting  
3 anywhere, and it's clear that Jerry's attempts at a new  
4 trial are not getting anywhere, and the settlements are  
5 being paid out, and you and I are now convinced of  
6 Jerry's innocence. We talked previously to you about  
7 why you were convinced of it, and you actually attended  
8 the trial, and you were a Second Mile kid.

9           But you say to me via Facebook, and this is one  
10 of the more remarkable elements of this whole story, it  
11 was a Sunday night, and I remember it because I had a  
12 golf tournament the next morning, on a Monday, And you  
13 say to me you were going to go see Andrew Shubin, the  
14 main lawyer in this case, who we both suspected was up  
15 to no good, because we knew he had represented nine, at  
16 least nine accusers, and some of the key accusers, and  
17 that their stories clearly were not true, and you were  
18 going to go confront Andrew Shubin.

19           Do you remember that?

20           MR. DILLEN: I do.

21           MR. ZIEGLER: Okay. And I told you, via Facebook  
22 messaging, that this was a waste of time for you to go  
23 confront Andrew Shubin, he's not going to do any -- you  
24 know, what's he going to say? "Oh, I got these guys to  
25 lie"? That's not going to happen.

1           So I suggested, with absolutely zero thought that  
2 this was actually going to happen, "Why don't you go  
3 tell him you were abused by Jerry Sandusky and see what  
4 happens?" Do you remember that?

5           MR. DILLEN: I do. And I was like, "It's a great  
6 idea."

7           MR. ZIEGLER: Okay. So to be clear, we never had  
8 a conversation about this, right?

9           MR. DILLEN: No.

10          MR. ZIEGLER: I mean, at this point, we'd never  
11 had a phone conversation. This was a Facebook direct  
12 message --

13          MR. DILLEN: Correct.

14          MR. ZIEGLER: -- that was, like, a couple  
15 sentences long. And I'm thinking nothing of this, Liz.  
16 I mean, I'm thinking nothing of this.

17          The next morning I wake up, and I'm on the West  
18 Coast, AJ is on the East Coast, and I check Facebook and  
19 I have a message from AJ, "It has been done."

20          MR. DILLEN: It is done.

21          MR. ZIEGLER: "It has been done."

22          MS. HABIB: I love that you did it. I love it.

23          MR. ZIEGLER: Well, but hold on a second.

24          MS. HABIB: I love it.

25          MR. ZIEGLER: I get the message, "It has been

1 done."

2 MS. HABIB: And you're going, "What's been done?"

3 MR. ZIEGLER: What the hell has been done.

4 MS. HABIB: Done? What's been done?

5 MR. ZIEGLER: I have no idea what the hell this  
6 guy is talking about. Because at this point, AJ, we  
7 don't know each other that well. We'd met once or twice  
8 at events for Paterno, you know, had had some  
9 interaction. I knew that you were a big Paterno  
10 supporter. But I had no idea the level to which you  
11 were willing to go to try to prove this case, and so I  
12 didn't understand what had transpired.

13 Well, what I -- so, what did transpire, AJ? When  
14 you say, "It has been done," what did you mean?

15 MR. DILLEN: My first interview or first meeting  
16 with Andrew Shubin had been done, and I went there, and  
17 that's pretty much when I concocted (inaudible) I'm  
18 surprised he believed me. I thought he was going to  
19 throw me out of his office.

20 MR. ZIEGLER: To be clear, I had absolutely --  
21 and I'm not even doing this for legal reasons, this is  
22 because it's the truth and I want to tell the story  
23 correctly -- I had absolutely nothing to do with your  
24 fake story of being abused by Jerry Sandusky, correct?

25 MR. DILLEN: Correct.

1           MR. ZIEGLER: And that was on purpose. Because I  
2 wanted it to be as organic and as crazy as possible.

3           MR. DILLEN: Right.

4           MR. ZIEGLER: And you did not disappoint. So you  
5 go into Andrew Shubin's office without an appointment  
6 and you tell him that you were abused by Jerry Sandusky,  
7 and what is the story that you tell him? Tell us the  
8 story.

9           MR. DILLEN: Oh, man. So, I made it up on a  
10 whim. It was that I went, Jerry picked me up at my  
11 house -- well, not at my house, but at the top of the  
12 hill, at this church. He got me in his car and he took  
13 me to Sunset Park, which is behind Joe Paterno's house.  
14 And then he, Jerry, took me out of the car, led me into  
15 the trail way behind Sunset Park, there's like a bike  
16 pathway/walking pathway there, and made me basically  
17 give him oral sex.

18           MR. ZIEGLER: Now, where did you come up with  
19 this story, AJ?

20           MR. DILLEN: Off the head. Like, literally, I'm,  
21 like, trying to remember what, like, some other people  
22 said, and then I just picked it up off -- literally on a  
23 whim, pretty much.

24           MR. ZIEGLER: And now to be clear, your story is,  
25 just so people -- I'm sure they don't understand the

1 geography here. Your story is basically Jerry Sandusky  
2 abused me behind Joe Paterno's house?

3 MR. DILLEN: Correct.

4 MR. ZIEGLER: That's your story?

5 MR. DILLEN: That was my original story, yeah.

6 MR. ZIEGLER: And Andrew Shubin's reaction,  
7 you're thinking, is "Get the fuck out of my office, you  
8 scam artist," right?

9 MR. DILLEN: Right.

10 MR. ZIEGLER: And instead, the reaction is what?

11 MR. DILLEN: He just believed me and then told me  
12 to basically come back another time, and then I kept  
13 going back to him, so...

14 MS. HABIB: Wait a minute. Wait a minute. When  
15 you're sitting in his office and you're telling this  
16 story, are your palms sweating? Are you, like, nervous?  
17 Are you, like, feeling like he's going to figure out I'm  
18 a fraud?

19 MR. DILLEN: Yeah, I mean, I figured that that  
20 might be the response I get from him, which I probably  
21 would have preferred anyways, because then it would have  
22 saved me three more years of my life and then all the  
23 time since. So --

24 (Inaudible cross-talk)

25 MS. HABIB: The truth is so uncomfortable, that

1 he would accept a story like this.

2 MR. DILLEN: Yeah.

3 MR. ZIEGLER: Oh, it gets way worse, Liz, way,  
4 way, way worse, all right? So, we're just getting  
5 started.

6 So you already referenced, AJ, that he says come  
7 back a second time, and to me, this is the moment, this  
8 is the smoking gun. If there was one smoking gun we  
9 have in this case -- and I believe we have a thousand --  
10 but if there was one that I -- if seen in its proper  
11 context that I believe proves our entire case, it's  
12 about what we're going to talk about right now, all  
13 right?

14 MR. DILLEN: Okay.

15 MR. ZIEGLER: So you go in for a second meeting  
16 with Andrew Shubin, and you record it?

17 MR. DILLEN: Correct.

18 MR. ZIEGLER: Now, I want to be clear, just for  
19 legal reasons, you believe that Shubin had every reason  
20 to believe he was being recorded, correct?

21 MR. DILLEN: Oh, he absolutely knows he was  
22 recorded because I told him I wanted it for my reference  
23 and, you know, just to be able to remember what he said  
24 and keep it for a future claim.

25 MR. ZIEGLER: Okay. So you end up recording this

1 session, as well as all your sessions with Shubin for  
2 three years after this, correct?

3 MR. DILLEN: Yes.

4 MR. ZIEGLER: As well as the therapist that he  
5 sends you to at Penn State's expense, which we'll get to  
6 shortly, but I want to really make sure we nail down  
7 what happens at this meeting. So he begins the meeting  
8 by reviewing your story that you told him, correct?

9 MR. DILLEN: Correct.

10 MR. ZIEGLER: Shubin proceeds to review your  
11 story, except it's not the story you told him, correct?

12 MR. DILLEN: That's correct. It's not even  
13 really anywhere close.

14 MR. ZIEGLER: It's not even close. So --

15 MR. DILLEN: No, it's not even close.

16 MR. ZIEGLER: Okay, so this is the essence of the  
17 bombshell. Now, you have to understand the context, as  
18 we're about to play the audio clip for you, but we have  
19 -- let's remember, let's remember that your story is I  
20 got sexually abused by Jerry Sandusky in a park behind  
21 Joe Paterno's house. That was it. And --

22 MR. DILLEN: That's it.

23 MR. ZIEGLER: Okay. And Andrew Shubin -- and  
24 you're going to hear in the audio, you're going to hear  
25 some keyboard clicking, so it sounds to me that Shubin

1       is reading from a computer; is that correct?

2            MR. DILLEN: He was. He was actively on the  
3 computer at the time.

4            MR. ZIEGLER: So he's looking on his computer and  
5 he's reviewing your story, at least as supposedly told  
6 to him, back to you, and my interpretation is he's  
7 getting you to sign off on this; is that a fair  
8 assessment?

9            MR. DILLEN: That's absolutely correct. I mean,  
10 just everything you said, that's pretty much what he was  
11 looking for, me to sign off on it.

12           MR. ZIEGLER: Okay. So let's listen to the audio  
13 of Andrew Shubin telling you what your story is. But  
14 keep in mind that this isn't your story and, in fact, at  
15 one point, you'll hear him reference your story and say,  
16 "We'll talk about that part later." Here's the audio.

17                    (Audio clip was played:

18            MR. SHUBIN: So, last time you were here, you  
19 brought your medications. I spoke with Cindy as well  
20 and provided her with an update. I do think it would be  
21 good for you to stay -- go back to her.

22            MR. DILLEN: Okay.

23            MR. SHUBIN: She said she hadn't seen you since  
24 March.

25            MR. DILLEN: Yeah.

1           MR. SHUBIN: 1993, you were 11 years old, you  
2 went to Second Mile in '94 and '95, and then there's the  
3 pool, groping you in the pool the first summer.

4           After the first summer, does Jerry pick you up  
5 and bring you to the campus and you have workout,  
6 showers, and you were sexually abused (inaudible) we  
7 didn't talk about (inaudible) just yet.

8           But the second summer, he would pull you out of  
9 activities, and you recall that in the locker room, he  
10 grabbed you again (inaudible) forced you to give him  
11 oral sex, right?

12          MR. DILLEN: Correct.

13          MR. SHUBIN: And there was also something that  
14 you had told me earlier about Sunset Park, but we'll get  
15 into that. You recall reporting abuse to camp  
16 counselors but they didn't believe you, and you reported  
17 it to someone from the administration on campus, in the  
18 (inaudible) department. It was after the second summer  
19 you believe that you went to the campus and you reported  
20 the abuse in a meeting, and they told you that he would  
21 never have done that to you. And you recall getting the  
22 meeting by telling the secretary you had something  
23 important you wanted to speak to -- about a private  
24 matter, and you felt you weren't believed. They said  
25 they would investigate it, and then they never got back

1 to you.

2 You recall also reporting the abuse to someone, a  
3 peer, during some sort of group therapy or (inaudible)?

4 MR. DILLEN: Yeah.

5 MR. SHUBIN: You believe that you reported it to  
6 some psychologists, but you're not sure and you might  
7 not have been specific.)

8 MR. ZIEGLER: So, AJ, take us back to you sitting  
9 there and Andrew Shubin is telling you a completely  
10 different story than the one that you had previously  
11 told him at your first meeting. What's going through  
12 your mind?

13 MR. DILLEN: I was, like, shocked and, like, just  
14 utterly baffled by how he changed my story and, like, I  
15 couldn't believe it. It was like, "What the heck?"  
16 Like, "Why did he do that?"

17 MR. ZIEGLER: Did you sense immediately what was  
18 going on, that you were supposed to approve of what he  
19 was doing?

20 MR. DILLEN: Yeah, I mean, like, it just felt  
21 like he wanted me to approve to that and that was my new  
22 story. And I was just like, "Wow, if he did this to me,  
23 how many other people did he do it to?" I was just like  
24 -- again, I didn't know what to think of that at that  
25 moment other than, "Wow, I have to roll with this," you

1 know? I have to go with this.

2 MS. HABIB: Hey, AJ, so while he's changing the  
3 story and you're kind of sitting there in the room, is  
4 he kind of looking at you and kind of going back and  
5 looking at you, or is he just on his keyboard? What was  
6 he doing?

7 MR. DILLEN: He was just looking at me, trying  
8 to, like -- straight looking at me. He was also on his  
9 keyboard, but that's what I was shocked about, just,  
10 like, he was giving me this look like I'm supposed to  
11 agree to this. And it wasn't even my original story, so  
12 I couldn't believe it. I was just -- I was in utter,  
13 like, awe and shock.

14 MR. ZIEGLER: You mentioned that you thought,  
15 "Oh, my gosh, if he's doing this to me, who else did he  
16 do this to?" Did you sense -- and I think this is where  
17 Liz was going -- that he was looking to kind of test  
18 you, that this was all a wink-wink, nod-nod? You get  
19 where I'm going with this, right, AJ? Is that what you  
20 sensed?

21 MR. DILLEN: Yeah, that's absolutely what I  
22 sensed, and I just, at that point, I felt kind of  
23 frozen, you know? Like, you just freeze because you're  
24 like, "I guess I'm supposed to go with this." So, I  
25 just went with it in concerns to how he changed my

1 story, and I couldn't believe, like, he did this. Like,  
2 this literally put me in shock because I was like, "How  
3 many other victims did he do this with," you know? And  
4 if he did, then this case, this entire thing is fraud,  
5 you know? It's a fraud.

6 MR. ZIEGLER: Well, let's take this out of the  
7 theoretical and into the practical. You attended many  
8 years later, although it was still during the sting  
9 operation, but after this episode with Shubin that you  
10 just experienced, you attended, as did I, the testimony  
11 of A [REDACTED] M [REDACTED], the boy in the shower, which was in  
12 public testimony.

13 And after we watched that, do you remember what  
14 the first thing you said to me was when we came together  
15 after we watched A [REDACTED] M [REDACTED]' testimony? Do you  
16 remember what you said to me?

17 MR. DILLEN: I don't recall, but you can remind  
18 me.

19 MR. ZIEGLER: Did you not tell me that was  
20 coached by Shubin?

21 MR. DILLEN: Yes, yes, I did tell you it was  
22 coached by Shubin, because it seemed identical, and I  
23 remember it was coached by Shubin.

24 MS. HABIB: Well, how did it seem identical? How  
25 did it seem -- what made you -- what cues in there made

1 you say that?

2 MR. DILLEN: Just his methods, just, like, the  
3 way things had transpired, and I just recognized it as  
4 the same as Shubin's -- you know, --

5 MS. HABIB: Words, certain words?

6 MR. DILLEN: -- way in which he changed my story.

7 MR. ZIEGLER: Liz is asking you a good question.

8 Were there certain words or cues or red flags in A [REDACTED]  
9 M [REDACTED]' testimony that made you come to that conclusion?

10 MR. DILLEN: Yeah, yeah. Yeah, absolutely.  
11 Sorry. He just, in the way, like, I felt like A [REDACTED]  
12 M [REDACTED] was coached because of the way in which his words  
13 -- like, I was sitting there at the PCRA, so I heard it  
14 but, like, to recall it at this point word for word is a  
15 pretty tough task, but I did recognize it as Shubin  
16 then, because Shubin and me talked in the way -- you  
17 know, in the same manner, and that's pretty much why I  
18 recognized it. His story is just pretty much --

19 I remember at the PCRA vividly he, like, said, "I  
20 can't recall" or "I can't remember" like 52 times or  
21 something, something like that, like he just -- A [REDACTED]  
22 M [REDACTED] is -- he's a liar. He's clearly lying. If he  
23 wasn't lying and was manipulated, he was a clear liar at  
24 the PCRA.

25 MR. ZIEGLER: I think technically it was

1 somewhere in the 30s, where he said either, "I can't  
2 remember" or "I don't recall."

3 MS. HABIB: Really?

4 MR. ZIEGLER: Yeah, and it was --

5 MR. DILLEN: Yeah, it was 30s. It was somewhere  
6 in the 30s, you're right, John, yeah.

7 MS. HABIB: Thirty times --

8 MR. ZIEGLER: Over 30 times. Over 30 times.

9 MS. HABIB: "I can't remember. I don't recall"?

10 MR. ZIEGLER: And these were incredibly  
11 significant things. Like, I can't remember --

12 MS. HABIB: You're not a defendant here, you're a  
13 victim.

14 MR. ZIEGLER: Right, right.

15 MS. HABIB: Remember it all, please, because that  
16 matters.

17 MR. ZIEGLER: But to be clear, it wasn't about  
18 the abuse, which he never talked about in any detail  
19 whatsoever. It was things like, for instance, "Where  
20 were you during Jerry Sandusky's trial?" "I don't  
21 remember."

22 MS. HABIB: Oh, that shouldn't even be allowed.  
23 That shouldn't have been allowed. You don't remember  
24 where you are when the guy who abused you supposedly,  
25 you don't remember where you are when that trial's

1 happening?

2 MR. ZIEGLER: Right, the guy who was your father  
3 figure for most of your life, who you lived with,  
4 biggest trial in modern Pennsylvania history --

5 MS. HABIB: And you don't know where you are.

6 MR. ZIEGLER: -- you have no idea where you are  
7 during that trial.

8 MS. HABIB: That shouldn't have been allowed.

9 That should have just been, like, what a joke.

10 MR. ZIEGLER: Okay. All right. But so that was  
11 a big moment in this whole situation, was it not, AJ,  
12 when -- maybe the biggest moment for you was when, right  
13 off the bat, that Shubin is molding -- not just molding,  
14 he is dramatically changing your story to a specific  
15 end, correct?

16 MR. DILLEN: Correct, Yeah.

17 MS. HABIB: Yeah, but you never said to him,  
18 "Wait. That's not what I said. No, that's not really  
19 what -- no, no, no, that's not what I said." Did you  
20 ever do that?

21 MR. DILLEN: No. I just knew I had to continue  
22 with the process, if this was how easy this was.

23 MS. HABIB: Okay.

24 MR. ZIEGLER: But was there -- was he looking for  
25 acknowledgement from you, AJ, that you were cool with

1       this?

2           MR. DILLEN: Maybe in body language. But yeah, I  
3 kind of felt, like, the pressure to agree with it, yeah,  
4 like, just in his body language.

5           MR. ZIEGLER: And did you? Like, did you give a  
6 nod or an oh, no, or uh-huh, or anything like that? I  
7 mean, was there an indication that you gave -- because  
8 you clearly didn't push back. You didn't say, "Wait a  
9 minute. That's not what I told you"?

10          MR. DILLEN: Right.

11          MR. ZIEGLER: So did he get the message that,  
12 "Okay, I got it, wink-wink, nod-nod. I see where we're  
13 going with this"?

14          MR. DILLEN: Yeah, he clearly got the message  
15 when I said -- I either nodded or I did probably go  
16 "uh-huh" to it.

17          MS. HABIB: Yeah, we heard you.

18          MR. DILLEN: But I didn't really, like -- you  
19 know, I just knew right then and there, like, okay, this  
20 is BS but I have to go through the process.

21          MR. ZIEGLER: And just to be very, very clear on  
22 this, none of that, none of what he described there is  
23 anything close to what you told him, correct?

24          MR. DILLEN: That is correct, none of it. It's  
25 all added material that he clearly added to my story and

1 changed it, so there's nothing in there that I  
2 originally said.

3 MS. HABIB: Except for one thing: when he goes,  
4 "You talked about the Sunset" --

5 MR. ZIEGLER: Park.

6 MS. HABIB: Yeah, "We'll get to that later.  
7 We'll get to that later."

8 MR. DILLEN: Oh, yes, the Sunset Park. Yes, that  
9 -- yeah.

10 MR. ZIEGLER: Did he ever get to that later, by  
11 the way?

12 MR. DILLEN: No, no.

13 MR. ZIEGLER: He wasn't --

14 MR. DILLEN: That was the story he was going to  
15 roll with.

16 MR. ZIEGLER: He was not interested in that  
17 story?

18 MR. DILLEN: No.

19 MR. ZIEGLER: And the most logical explanation  
20 for that is that story is really not valuable to him  
21 because that's not on Penn State's campus, correct?

22 MR. DILLEN: Correct.

23 MR. ZIEGLER: So Penn State doesn't have any  
24 knowledge of that, it's not on their campus, that's not  
25 worth any money to him, right?

1           MR. DILLEN: Right. That is absolutely correct,  
2 yes.

3           MR. ZIEGLER: Okay. So at this point, you  
4 realize, "Oh, my gosh, not only are they going to  
5 believe me, but they're going to manipulate my story in  
6 a way that has nothing to do with the truth, that is  
7 purely designed to potentially make a claim against Penn  
8 State," right?

9           MR. DILLEN: Right.

10          MR. ZIEGLER: Now, you've already mentioned that  
11 you're outside the statute of limitations. We're going  
12 to get to that later, as to how that ends up impacting  
13 your situation with Shubin. But this facilitates a  
14 three-year-plus, for lack of a better term, sting  
15 operation that you engage in, where most of your  
16 interactions are with Shubin's therapist, who I believe  
17 he referenced, for instance, there in that audio we just  
18 heard, Cynthia Macnab, correct?

19          MR. DILLEN: Correct.

20          MR. ZIEGLER: And so over this three-year-plus  
21 period, how many times would you say you met with  
22 Shubin?

23          MR. DILLEN: Oh, without verifying and off the  
24 head, probably at least 12, at least 12.

25          MR. ZIEGLER: And you believe -- although I find

1       this hard to believe because I was interacting with you  
2       far too much during this time period -- but you believe  
3       that you met with Cynthia Macnab, his go-to therapist,  
4       about 100 times. Is that true?

5            MR. DILLEN: Yep, that's absolutely correct, it  
6       was about 100 times.

7            MS. HABIB: A hundred times?

8            MR. DILLEN: Yeah.

9            MS. HABIB: You went along with this and went to  
10      a therapist 100 times?

11          MR. DILLEN: Yeah, every Wednesday for three  
12      years, weekly.

13          MR. ZIEGLER: To talk about abuse that did not  
14      happen?

15          MR. DILLEN: Yeah.

16          MS. HABIB: I can't wait to hear about that.

17          MR. ZIEGLER: Well, we have some audio of that,  
18      but let's -- but here's what we're going to do to try to  
19      make this as simplified as possible.

20          So during this three-year sting operation, where  
21      no one ever called you out as a fake, as being a not  
22      legitimate accuser, correct?

23          MR. DILLEN: Correct.

24          MR. ZIEGLER: Okay. And no one ever even has any  
25      real strong suspicions that you're not a true accuser;

1 is that fair?

2 MR. DILLEN: That's fair.

3 MR. ZIEGLER: Even though -- and we're going to  
4 hear some of this in the audio -- there are times when  
5 Shubin himself should have gone, "Whoa, whoa, whoa, wait  
6 a minute. What the hell's going on here?" Because  
7 there were times when -- and again, this is the James  
8 Bond/Barney Fife disparity, that there were times that  
9 you didn't -- and I'm not blaming you for this, AJ, but  
10 there were a few moments when he could have figured this  
11 out pretty easily, right?

12 MR. DILLEN: Oh, yeah. Yeah, there's times I  
13 messed up even with how I transitioned or my delivery of  
14 what -- whether it was my questions or I messed up  
15 terribly on probably multiple occasions, in concerns to  
16 draw suspicion. But he didn't -- he didn't care.

17 MR. ZIEGLER: Yes, you did. Yeah, and we're  
18 going to get --

19 MS. HABIB: Yeah, I'd like to hear that. Because  
20 you can assume that Shubin's going, "Well, this is all  
21 repressed memory, so, you know, it'll come out later."

22 MR. ZIEGLER: Well, there's one particular  
23 moment, which we're going to get to momentarily, where I  
24 got Jerry Sandusky to write a letter to AJ from prison  
25 to give him more credibility, to Shubin, because I'm

1 thinking --

2 MS. HABIB: And Jerry's in on this, too?

3 MR. ZIEGLER: Oh, Jerry was in on it.

4 MS. HABIB: Yeah?

5 MR. ZIEGLER: I mean, I kept Jerry as in the dark  
6 as I could, but I think he knew basically what was  
7 happening. So I got Jerry in prison to send AJ a letter  
8 and, you know, we'll get to it shortly. Actually, you  
9 know what? Let's -- this is our clip number three. Can  
10 we -- let's do it now since we've mentioned it. I mean,  
11 this, to me, is a moment where you really screw up, AJ,  
12 out of panic.

13 Because I get Jerry to write this letter from  
14 prison. It's clearly, the way it's written, from  
15 prison, and Shubin is figuring out that it's from prison  
16 because Jerry's talking about how his life is now  
17 confined.

18 MS. HABIB: What?

19 MR. DILLEN: Correct.

20 MR. ZIEGLER: And AJ is trying to pretend he  
21 doesn't know when the letter was sent to him because  
22 he's panicked. I'm getting -- right? You're panicked;  
23 is that fair?

24 MS. HABIB: Oh, God.

25 MR. DILLEN: I panicked because it dawned on me,

1 "Oh, man, I totally screwed up. He's going to figure  
2 this out right now."

3 MR. ZIEGLER: Right.

4 MR. DILLEN: And he didn't. He just went with  
5 it, and he just -- I don't know how his brain didn't go,  
6 "Oh, he's bullshitting."

7 MS. HABIB: All right, let's hear this.

8 MR. ZIEGLER: Okay, so this is the audio of  
9 Shubin is handed the letter that Jerry Sandusky has  
10 written clearly from prison, and AJ is panicked and  
11 doesn't know how to handle it, so he pretends he doesn't  
12 remember when Jerry Sandusky sent him a letter from  
13 prison, after having been convicted of being a child  
14 molester, and here's what the audio sounded like.

15 (Audio clip was played:

16 MR. SHUBIN: So this is the letter? It says  
17 (inaudible) when did you get this again; do you  
18 remember?

19 MR. DILLEN: I don't know. I don't recall, yeah.

20 MR. SHUBIN: What, you don't remember?

21 (Inaudible cross-talk.) [crosstalk 00:42:53.210]

22 MR. DILLEN: I don't recall exactly.

23 MR. SHUBIN: "I just wanted you to know, as my  
24 life has been confined" -- I think that's what he says,  
25 don't you? It says "confined?"

1 MR. DILLEN: (Inaudible cross-talk.)  
2 MR. SHUBIN: So, in jail?  
3 MR. DILLEN: Yeah. I don't think so.  
4 MR. SHUBIN: You don't think --  
5 MR. DILLEN: (Inaudible.)  
6 MR. SHUBIN: You don't remember him giving that?  
7 Do you remember when he got this letter?  
8 UNIDENTIFIED SPEAKER: Uh-uh (negative.)  
9 MR. SHUBIN: Oh, you didn't know he got it?  
10 UNIDENTIFIED SPEAKER: No.  
11 MR. SHUBIN: Where was it sent to?  
12 MR. DILLEN: Huh?  
13 MR. SHUBIN: Where was the letter sent?  
14 (Inaudible cross-talk.)  
15 MR. DILLEN: I don't even know. Check the  
16 (inaudible.)  
17 MR. SHUBIN: Do you have the envelope?  
18 MR. DILLEN: I believe so, yeah.  
19 MR. SHUBIN: (Inaudible.)  
20 MR. DILLEN: I might have thrown it away. I  
21 don't know. But I'll check for it.  
22 (Inaudible cross-talk.)  
23 MR. SHUBIN: If you have it, don't throw it away,  
24 all right? I think it says, "I cherish memories of you  
25 and other Second Mile young people more than ever.

1 Please know I am glad of my involvement with you and  
2 proud of the person you've become. You're a special  
3 part of my life and will remain. Thanks for the  
4 memories. With love and friendship, Jerry."

5 So "As my life has been confined," so yeah,  
6 (inaudible.)

7 UNIDENTIFIED SPEAKER: And also, he said --  
8 (Inaudible.)

9 MR. SHUBIN: Right. Do you recognize that  
10 (inaudible) when we looked at other letters that he  
11 sent.)

12 MR. ZIEGLER: All right. Now, AJ, the letter is  
13 clearly having the impact that I had hoped that it would  
14 have because Shubin is intrigued, and it's giving you  
15 credibility, but you're trying to claim to him you don't  
16 know when this was sent and you don't have the envelope,  
17 you think you threw it out. And yet, he's not -- you  
18 can tell there's a little bit of suspicion, right? He's  
19 having some suspicion, but he's not willing to call  
20 bullshit on this; is that fair?

21 MR. DILLEN: That's absolutely fair. That's  
22 pretty much how that transitioned and transpired.

23 MR. ZIEGLER: And yet, so that doesn't change his  
24 view of you at all. He never makes that leap to, "Wait  
25 a minute. I'm being had here."

1           MR. DILLEN: No, no, he never made that leap.

2           MR. ZIEGLER: Okay. And to be clear, you just  
3 panicked, is that what happened?

4           MR. DILLEN: Yeah, I panicked because it dawned  
5 on me, I was, like, "Wait a minute. If he's already --  
6 if his brain's registering 'wait a minute,' this letter  
7 is saying he's confined, I'm screwed because he's going  
8 to call bullshit on this letter." And he never did.

9           MS. HABIB: No, no. In fact, he said, "I've seen  
10 other letters like this."

11          MR. DILLEN: Oh, yeah, yeah.

12          MR. ZIEGLER: Right. But, AJ, we had gone  
13 through this. We had -- this is what's so frustrating  
14 about you. We had gone through this. I had gone  
15 through enormous lengths to get this letter from Jerry  
16 Sandusky from prison, and we talked about how this was  
17 going to go down, and then you just completely forgot  
18 about it and totally panicked. (Inaudible cross-talk.)

19          MR. DILLEN: I did. I did.

20          MR. ZIEGLER: Okay. All right.

21          MS. HABIB: But wait a minute. What did you  
22 think was going to go down?

23          MR. ZIEGLER: We had already talked about how we  
24 were going to admit that this was something that  
25 happened from prison, that this was purely just a way to

1 establish the relationship. Unlike, you know, R [REDACTED]  
2 R [REDACTED], victim number ten, never even met Jerry  
3 Sandusky until trial, that here we have proof of  
4 contact. We had already -- he had --

5 MS. HABIB: "Hey, look, he really knows me, he  
6 sent me this letter from prison"?

7 MR. ZIEGLER: Right, Right.

8 MS. HABIB: "Look, this is real," that kind of  
9 thing, because that wasn't clear. And I get it, I get  
10 it.

11 MR. ZIEGLER: And I specifically asked Jerry to  
12 end the letter with some semblance of using the word  
13 "love." I wanted him to say -- because remember, he  
14 said to A [REDACTED] M [REDACTED] on the phone, "Love you," and you  
15 know, there are all these supposed love letters that he  
16 had sent to victim number four, which weren't really  
17 love letters.

18 And so Jerry actually did a pretty decent job of  
19 doing what I wanted him to, considering we never even  
20 had a phone conversation about it. This was all via  
21 e-mails and letters. And, you know, here AJ is, where  
22 I've had phone conversations with him, and AJ butchers  
23 the whole fucking thing.

24 MS. HABIB: I don't know if he did, John.

25 MR. DILLEN: I did.

1 MR. ZIEGLER: Yeah, you --

2 MS. HABIB: I think it proves how ludicrous it  
3 all is.

4 MR. ZIEGLER: Well, in a weird way, you're right,  
5 Liz.

6 MS. HABIB: It worked, yeah.

7 MR. DILLEN: Yes, she's right.

8 MR. ZIEGLER: No, you're right.

9 MS. HABIB: Thank you, AJ. Yeah.

10 MR. ZIEGLER: No, you're right. In a weird way,  
11 it worked out, But it might have blown up in our faces  
12 because -- yeah.

13 MS. HABIB: It might have. It might have if  
14 Shubin was, you know, legit in the situation, it might  
15 have. But he wasn't.

16 MR. ZIEGLER: Exactly. Okay, fair enough. Okay,  
17 so as you can tell, AJ and I have had a very contentious  
18 relationship for the last eight years.

19 MS. HABIB: AJ, you've done amazing work, to be  
20 honest.

21 MR. ZIEGLER: Okay, okay. Well, we're still --

22 MR. DILLEN: Thank you.

23 MR. ZIEGLER: Okay, well, there's a lot more to  
24 get to. Okay, so let's go through some of the things AJ  
25 learned in his conversations with Andrew Shubin over

1 this three-year sting operation.

2           One of the things that I found really  
3 interesting, AJ, is I'm always curious, kind of like  
4 with Ira Lubert, what are these people who say they  
5 believe Jerry Sandusky is guilty, what is really in  
6 their thinking? What are they basing it on? And we  
7 have a couple of clips that relate to this subject.

8           This one is, I believe, the longest clip we have,  
9 it's several minutes long, and this deals with several  
10 key elements of the story that we've already discussed,  
11 and it basically gives the background. Shubin is giving  
12 AJ his background on his connection to Ross Feller  
13 Casey, the Philadelphia law firm, with the brother of  
14 the U.S. Senator from Pennsylvania is Casey, the name  
15 Ross Feller Casey, and how that's important.

16           I have previously referred to Shubin as kind of  
17 like a birddog scout for a larger law firm that will  
18 come in and get the money, and that's almost word for  
19 word what we're about to hear Shubin say. Shubin admits  
20 to you that Ross Feller Casey is really only involved  
21 here to get the money, that's what they're there for.

22           Ross Feller Casey, I'll guarantee you they never  
23 had an actual, direct conversation with any of these  
24 accusers. They're just there as the guys with the big  
25 reputations and the connections, and they're in

1 Philadelphia and they're having lunch with everybody and  
2 they're friends with Ira Lubert. And the brother, you  
3 know, Bob Casey is Matt Casey's brother, he's the U.S.  
4 Senator from Pennsylvania, Shubin is about to admit to  
5 all of that.

6           But then even more interestingly, Liz, he  
7 references his battle with prosecutors, that prosecutors  
8 had a problem with Andrew Shubin throughout this  
9 process, and this is where -- you actually do a really  
10 good job here, AJ. This is one of your more James  
11 Bond-y moments, where you elicit that "Wait a minute.  
12 It was the police coming to the accusers, not the other  
13 way around," and that this creates a dynamic where  
14 eventually, the prosecution is very concerned about  
15 Shubin's involvement because they're worried it's going  
16 to destroy their star witness's credibility.

17           And so this is all, all of this, is encompassed  
18 in this rather long clip that was done during this sting  
19 operation, where Andrew Shubin is basically spilling the  
20 beans about what was going on behind the scenes, which  
21 really is important context for this whole story.

22           (Audio clip was played:

23           MR. SHUBIN: And so for you, you know, your  
24 situation is one that -- you know, a lot of the other  
25 cases I had cooperation, like I had (inaudible) you

1 know, I had the state police calling these kids and  
2 saying, you know, we believe you were a victim. And I  
3 don't know exactly what the state police knew, but what  
4 the state police told those folks was --

5 MR. DILLEN: So they didn't come to -- they  
6 didn't come to the police, is what you're saying?

7 MR. SHUBIN: No.

8 MR. DILLEN: The police went towards them?

9 MR. SHUBIN: The police went -- most of the  
10 people I represent wanted nothing to do with this. The  
11 police found them and questioned them.

12 MR. DILLEN: Okay.

13 MR. SHUBIN: And that's when they contacted, you  
14 know, me, or -- some time after that, so....

15 MR. DILLEN: And that's -- so, how did they get  
16 your name?

17 MR. SHUBIN: Well, I mean, they got my name  
18 because I was -- from people they knew, from a  
19 psychotherapist, or from the fact that they knew I was  
20 involved in this. I've been, you know, involved and  
21 everything, you know, I've been -- I'm sort of the guy  
22 on the ground here that's been involved in this  
23 situation from the very beginning.

24 MR. DILLEN: Okay.

25 MR. SHUBIN: So, you know, I mean, people get to

1 attorneys in different ways.

2 MR. DILLEN: Right. Yeah, I'm just --

3 MR. SHUBIN: I'm like, of all the attorneys, I'm  
4 the guy that's here, you know, like -- and I'm, you know  
5 (inaudible) and I think I know more about what happened  
6 than any other. A lot of the other attorneys are from  
7 out of town (inaudible,) you know, from out of town, and  
8 they're, you know, getting into the big cases, and  
9 they're going --

10 MR. DILLEN: Now, those attorneys, you said you  
11 work with the other -- you're part of the whole group?

12 MR. SHUBIN: So, right. So I paired up with Ross  
13 Feller Casey, which is a Philadelphia catastrophic  
14 injury firm.

15 MR. DILLEN: Okay.

16 MR. SHUBIN: And, you know, they are better at  
17 finding the money, they're better at negotiating. They  
18 work big cases all the time. And so I felt like my  
19 clients were best served by having that kind of  
20 expertise, in terms of the money.

21 MR. DILLEN: Okay. So you contacted them or they  
22 contacted you?

23 MR. SHUBIN: We've worked together on other  
24 cases.

25 MR. DILLEN: Oh, so this is like a business

1 relationship, and hey --

2 MR. SHUBIN: Yeah, yeah, we're just sort of -- I  
3 was comfortable. I reached out to him. But also, that  
4 firm, one of the partners in that firm is a guy named  
5 Matt Casey, and Matt Casey's brother is the Senator from  
6 Pennsylvania, and I felt like having a political  
7 connection was very important because it's -- it gets to  
8 be a very long story, but because I thought the Attorney  
9 General's Office was throwing these cases, was fucking  
10 them up royally and wasn't helping these victims, was  
11 hurting them, and so --

12 MR. DILLEN: How do you feel like they were  
13 messing them up, so to speak?

14 MR. SHUBIN: They were telling them that, you  
15 know, to -- they were basically discouraging them from  
16 pursuing any civil cases because they were afraid, you  
17 know, that if they testified in the Sandusky case, that  
18 they wouldn't be believed because they had civil  
19 lawyers. The guy was only doing this for money, you  
20 know, you're not doing it because it's the truth. So  
21 they didn't want these kids, these people to have  
22 anything to do with attorneys that we're protecting  
23 them, right, because it didn't help their, you know --

24 MR. DILLEN: But if they were criminal attorneys,  
25 why would they think that?

1 MR. SHUBIN: No, it was a prosecutor.

2 MR. DILLEN: Right, okay.

3 MR. SHUBIN: So the prosecutor --

4 MR. DILLEN: But why would the prosecutor want to  
5 sacrifice their case?

6 MR. SHUBIN: These victims -- they didn't. The  
7 prosecutor felt like having civil attorneys -- you know?

8 MR. DILLEN: Okay.

9 MR. SHUBIN: But, plus, I was, like, fighting  
10 with the prosecutors every day of the week because I  
11 didn't like the way they were treating, you know, these  
12 victims. Because victims, and you know this, they come  
13 forward and they talk, they say here's what -- you know,  
14 they say nothing happened, right? It's typical,  
15 "Nothing happened to me. Jerry was a father figure to  
16 me," right?

17 And then, you know, they later say -- they go  
18 before a grand jury and they say, "Well, you know,  
19 something happened but, you know, it was only this, and  
20 I don't remember," you know? And then when they get to  
21 the right people, like psychologists, therapists, you  
22 know, the right attorneys and, you know, they understand  
23 that they need to get it all out on the table, otherwise  
24 -- you know, that's their only chance, and then they get  
25 the support because they're talking to someone who

1 understands, or they go to a psychologist or a  
2 therapist, and then they remember a whole lot more,  
3 right?

4 MR. DILLEN: Right.

5 MR. SHUBIN: And that's the truth. But the  
6 prosecutor only wants them to say what they said before  
7 the grand jury, right, a year before? They don't want  
8 to know from what the truth is because it contradicts  
9 what they already said under oath.

10 So the prosecutors were, you know, were trying to  
11 shove -- you know, were trying to keep these young men  
12 from talking about everything that happened to them,  
13 because they only wanted them to say what happened, what  
14 they had already said before the grand jury, because the  
15 defense attorney would say, "Well, you know, you -- so  
16 you went to a grand jury and you were under oath, and  
17 you said only A and B happened to you. And now you have  
18 a civil lawyer and you went to see a shrink, and blah,  
19 blah, blah, blah, and now you're saying, you know, C, D,  
20 E and F and G happened to you," right?

21 MR. DILLEN: Right.

22 MR. SHUBIN: So it's a credibility thing. So,  
23 you know, we represent -- and I represent these young  
24 men who -- their interests, right? The Commonwealth,  
25 the prosecutors, just saw them as a tool to get

1 (inaudible) you know? They didn't care what happened to  
2 them afterwards.

3 MR. DILLEN: So is it reasonable to believe that  
4 some of them probably coached them, in some fashion?

5 MR. SHUBIN: What do you mean?

6 MR. DILLEN: Well, don't prosecutors and defense  
7 lawyers, like -- like, don't they coach on the stand?

8 MR. SHUBIN: Well, I wasn't the defense lawyer,  
9 so, like, I had nothing -- right? So, I'm your civil --

10 MR. DILLEN: Okay, you're civil.

11 MR. SHUBIN: I'm the civil lawyer, right, right.  
12 So I didn't have any -- like, I just gave advice to  
13 these folks to tell the truth, to make sure that they  
14 understood what the truth was and, you know, and don't  
15 back down just because it's inconvenient for a  
16 prosecutor, you know?

17 MR. DILLEN: Right.

18 MR. SHUBIN: You know, you need to tell the  
19 truth. And like, you know, to be honest with you, I  
20 knew that Sandusky wasn't just, you know, taking a kid  
21 to a football game and putting his, you know, hand on  
22 his knee, that that -- like, that wasn't the end of the  
23 analysis of people who were spending a lot of time with  
24 him. I knew, you know, that -- like, I just knew that  
25 Sandusky was perpetrating abuse on them; otherwise, he

1       wouldn't be (inaudible.)

2           And so to the extent someone would minimize it, I  
3       understood that that's part of the process, so...

4           MR. DILLEN: And, I mean, outside of him, like,  
5       does that mean, like, anyone, parent, guardian, or  
6       anyone shouldn't put their, like, hand on your knee and  
7       say, like, good job or whatever? You see what I'm  
8       saying? Like --

9           MR. SHUBIN: No, no, no, no, no, no. If you told  
10      me and I put my, you know, I -- you said to me that, you  
11      know, there's a guy putting his hand on my knee or put  
12      his arm around me, you know, you know -- so like, my  
13      uncle, I wouldn't necessarily -- I wouldn't go to a  
14      place of abuse. But then if you said here's a guy who's  
15      been accused of abusing, you know, 37 people, right, and  
16      they all tell the same stories, they don't even know  
17      each other and, you know, and this one kid says only one  
18      thing, you know, nothing happened to him, and Jerry took  
19      him to ball games and this, that, and the other, would I  
20      be skeptical? I would be skeptical, you know?

21           MR. DILLEN: Right.

22           MR. SHUBIN: You know, I don't -- Jerry -- you  
23      know, in my mind, the victims were telling the truth,  
24      not him.

25           MR. DILLEN: Right.

1 MR. SHUBIN: So...)

2 MR. ZIEGLER: Liz, there's a ton to unpack there.

3 MS. HABIB: Yeah.

4 MR. ZIEGLER: And I think one of the more  
5 interesting aspects is his battle with the prosecutors.  
6 This is a guy who clearly has disdain for the  
7 prosecutors, and it's obvious that the prosecutors had  
8 disdain for Andrew Shubin.

9 And if you remember -- because this is a small  
10 detail I know that we've mentioned previously -- but you  
11 know, victim number two, A [REDACTED] M [REDACTED], was his client,  
12 who did not testify at trial. There's a document where  
13 investigators specifically say that they don't believe  
14 A [REDACTED] M [REDACTED] statement of being a victim because they  
15 think it was written by Andrew Shubin.

16 I mean, so there's an inherent distrust here.  
17 There's a battle between the prosecution -- you know,  
18 Shubin claims that they're just using the victims for  
19 their own purposes --

20 MS. HABIB: To get to Jerry Sandusky.

21 MR. ZIEGLER: Right.

22 MS. HABIB: But something really important he  
23 said in there, off the top of that clip in particular,  
24 "at finding money," I wrote down the words, that Casey  
25 Ross --

1 MR. ZIEGLER: Ross Feller --

2 MS. HABIB: Yeah, Ross Feller Casey, whatever,  
3 "They are very good at finding money." There's the  
4 motivation, Not at helping you, at finding the truth, at  
5 getting Jerry Sandusky put away, getting you the things  
6 you -- at finding money, right?

7 MR. ZIEGLER: Well, and --

8 MR. DILLEN: Correct.

9 MS. HABIB: So the prosecutors are getting in the  
10 way of finding money is what I hear.

11 MR. ZIEGLER: Well, they have two very different  
12 motivations. Now, you could argue in a case that's  
13 based in truth, you know, that the prosecution is trying  
14 to do what's right. But what was really happening here  
15 was that the prosecution was terrified that this was  
16 going to be treated like a normal case and that Shubin's  
17 influence was going to contaminate their star witnesses.

18 MS. HABIB: Yes, yeah.

19 MR. DILLEN: True.

20 MR. ZIEGLER: And he -- and you agree with that,  
21 AJ, right?

22 MR. DILLEN: Yeah, but there's no reason to  
23 believe it would have blown up at that point, you know  
24 what I mean, in the sense so if it's treated like a  
25 normal case, yeah, that's a dangerous -- that could

1 damage their case.

2 MR. ZIEGLER: Right, but so this conflict between  
3 the prosecution and Shubin goes very, very deep, but it  
4 also goes to, you know, something we've discussed  
5 previously. Remember, he represented victim number  
6 three, J█████ S█████. J█████ S█████ at trial says  
7 barely anything happened, but then when it goes to the  
8 settlements, he's being raped all over Penn State's  
9 campus.

10 MS. HABIB: Right.

11 MR. ZIEGLER: And he gets paid a lot of money for  
12 that. And that goes to exactly what Shubin is talking  
13 there about, when you "remember a whole lot more" after  
14 having gone to "the right people."

15 MS. HABIB: Right, I wrote that down, "the right  
16 people," my people. My people will help you out the way  
17 you need to be helped out.

18 MR. DILLEN: Correct.

19 MR. ZIEGLER: You have to go to the right people  
20 so that you remember everything that actually happened.

21 Now, you had gone to that right person, Cynthia  
22 Macnab, correct, AJ?

23 MR. DILLEN: Correct.

24 MR. ZIEGLER: Right. And we're going to get to  
25 her in short order.

1           But so he is, to me, I immediately thought, oh,  
2 my gosh, that's exactly what happened with Simcisko,  
3 where all of a sudden, you know, where we don't have to  
4 worry about the prosecution anymore and Penn State's not  
5 fighting back, Simcisko can claim all sorts of crazy  
6 abuse, and we're going to get paid lots of money for it.

7           So, it's obvious that Shubin wants the money,  
8 Ross Feller Casey is there to get the money. And then  
9 he also, AJ, -- and this goes to this issue of what is  
10 Shubin's theory of what actually happened -- he's very  
11 arrogant about his level of knowledge of this case,  
12 right? He thinks he's cracked it; is that a fair  
13 assessment?

14           MR. DILLEN: Yes.

15           MR. ZIEGLER: And he says in there towards the  
16 end, which I found appalling, and you seem to  
17 immediately react in the same way I would have, he says,  
18 "I just knew." He says, "I just knew Jerry Sandusky was  
19 a child abuser, because otherwise, he wouldn't have been  
20 spending so much time with kids." That's almost a  
21 direct quote, "I just knew."

22           And you pushed back on that. You said, "Well,  
23 wait a minute, you know, is it inherently signs that  
24 you're a pedophile if you put your hand on somebody's  
25 knee?" And then he comes back and says, "Well, if it's

1 an uncle or something, then it's okay, I wouldn't go to  
2 the sexual place." And I keep thinking, and I'm  
3 wondering if you did, AJ, "Wait a minute. Jerry thinks  
4 of himself as these guys' dad, the dad of these guys,"  
5 right?

6 MR. DILLEN: Correct.

7 MR. ZIEGLER: So what did you --

8 MR. DILLEN: He absolutely treated them like his  
9 kids. I mean, they were -- they were treated that way  
10 because he viewed them as his children.

11 MR. ZIEGLER: All right. Well, and so what did  
12 you make of Shubin having that as the basis? I mean,  
13 here's a guy who's represented all these victims. He  
14 should have mountains of evidence that Jerry Sandusky is  
15 guilty, and he's basing it on, "Well, he just wouldn't  
16 have spent that much time with kids if he was not  
17 guilty." What did you make of that?

18 MR. DILLEN: I think that's an absurd statement  
19 because, man, we could lock up a lot of people if that's  
20 the basis of how you view what a pedophile is.

21 MR. ZIEGLER: Well, it's also very dangerous.  
22 And this is one of the aspects of this case that has  
23 really stuck with me, especially as the father of two  
24 young daughters, the idea that we're now getting  
25 frighteningly close to where people are afraid to

1 display any semblance of affection towards kids because  
2 they might be perceived as a pedophile.

3 MS. HABIB: What do you mean we're getting close?  
4 That goes on all the time.

5 MR. ZIEGLER: Well, that's what I'm saying. I  
6 mean, we're -- I mean, I've been --

7 MS. HABIB: The assumption is made right away.

8 MR. ZIEGLER: I've been in situations, Liz,  
9 because I have two young daughters and, you know, back  
10 when we were still allowed to go to playgrounds, before  
11 coronavirus --

12 MS. HABIB: Exactly. Well --

13 MR. ZIEGLER: -- where I have this weird thing,  
14 and my wife has noticed this, where little girls for  
15 some reason gravitate towards me on the playground. I  
16 don't know if it's because I have two young daughters or  
17 whatever. And I now feel like I have to, like, run  
18 away. I mean, I've had kids ask to swing me on the  
19 swings because no one -- they don't have a parent or  
20 guardian around. I can't do it. I can't even -- I  
21 can't even swing them on the swings. I mean, it's  
22 terrible. It's heart- -- I mean --

23 MS. HABIB: Oh, it's heartbreaking actually, but  
24 that is the way the world is now.

25 MR. DILLEN: Yeah.

1           MR. ZIEGLER: And so that really bothered me, but  
2 I thought it was enlightening to understanding Shubin's  
3 level of rationalization here.

4           But the core of that clip, AJ, to me, is him  
5 telling you the mechanisms of how this transpired and  
6 the key part of, "Well, look, we are anticipating that  
7 people are going to say, at first, nothing happened, but  
8 eventually, the truth will come out when you see the  
9 right people," correct?

10          MR. DILLEN: Correct.

11          MR. ZIEGLER: Yeah, and so you go through that  
12 process, which we'll get to momentarily, but --

13          MS. HABIB: You know what else in there, John,  
14 that I thought was interesting? Were you going to go on  
15 to another thing there?

16          MR. ZIEGLER: No.

17          MS. HABIB: The Casey bit.

18          MR. DILLEN: Yeah.

19          MS. HABIB: Well, we wanted to -- you know, I  
20 wanted to be with Casey. Well, what's Senator Casey  
21 going to do? What's the politics going to do with this?

22          MR. ZIEGLER: It's all perception: you're in the  
23 right club. Ross Feller Casey is in the cool kids club.

24          MS. HABIB: I know exactly that, John, but it's  
25 just -- doesn't that just feel like, "Oh, that's so

1 slimy," right? You're going to get, "Oh, we chose the  
2 right law firm," you know what I mean?

3 MR. ZIEGLER: But that is so key to understanding  
4 how this transpired. If you were in the club, if you  
5 were friends with Ira Lubert, if you were a respected  
6 law firm in Philadelphia, then you were automatically  
7 presumed to have clients that were credible and they  
8 were telling the truth.

9 MS. HABIB: Right, because the senators always  
10 tell the truth.

11 MR. ZIEGLER: Right. Well, perception is  
12 everything.

13 MS. HABIB: Politicians are the most honest  
14 people on the planet.

15 MR. DILLEN: Remember, Robert Casey ran for  
16 President, too, I mean, so he's pretty important.

17 MR. ZIEGLER: Right. Well, it's all about --  
18 it's basically about, you know, intimidation and using  
19 your connections.

20 MS. HABIB: Yes, it is. Yeah, as always.

21 MR. ZIEGLER: All right, so getting back to this  
22 issue of -- because I'm always fascinated by what do  
23 these people really think happened and what is their  
24 basis for believing that Jerry is guilty, and it's never  
25 about the evidence. No one ever says, whether it's Ira

1 Lubert or, in this case, Andrew Shubin, no one ever  
2 says, "Look, let me tell you about this particular  
3 victim, who said this contemporaneously," and they have  
4 this to back up their story. It's never --

5 MS. HABIB: Yeah, but there's one thing. There's  
6 one thing. He said about the hand on the knee thing  
7 that we just heard from Shubin, "I understood that's all  
8 the process," right? So the grooming process is what I  
9 assumed him to say. And that was the thing that  
10 prosecutors went off, too, they put the hand on the knee  
11 in there so many times, right, like this is the process.

12 But as you stated, John, there was never anything  
13 past the hand on the knee. There was never plying  
14 anybody with alcohol and drugs. There was never -- but  
15 he starts with, "I understand that's the process."

16 MR. ZIEGLER: Because that's what he's believing.  
17 He's accepting that as the conclusion, and then he's  
18 putting in the pieces to get to that conclusion. And  
19 let's be clear, that conclusion is very, very good for  
20 his bank account. And so it never is about facts, it's  
21 never about a specific episode that can be proven. It's  
22 always about these theories and these big picture  
23 perceptions of Jerry.

24 And one of them that I found particularly  
25 fascinating, AJ, is when you got him to talk about how

1 Jerry, being a top-notch defensive coordinator in  
2 college, played a key role in him being able to manage  
3 this entire criminal enterprise. This is Jerry Sandusky  
4 as criminal mastermind, as proven by his defensive  
5 coordinator genius at Penn State, and here's Shubin  
6 talking to you about that.

7 (Audio clip was played:

8 MR. SHUBIN: -- felt different. So I mean,  
9 everybody's different, and Jerry had enormous control  
10 over some people, and less control over others, and  
11 Jerry had control over some people well, you know, into  
12 their adulthood. So, you know, you told me that Jerry  
13 remembered you recently --

14 MR. DILLEN: Yeah, I did.

15 MR. SHUBIN: -- as an adult, which, you know,  
16 means that, like, you know, he knew that you were, you  
17 know, you were out there, and he was playing defense,  
18 so...

19 MR. DILLEN: I don't know if (inaudible)

20 MR. SHUBIN: That's the way I -- I mean, I think  
21 he's a defensive coordinator, and I think that from the  
22 moment he chose a life as a pedophile, he began acting  
23 on it and began laying down his defense for that, too,  
24 which was, you know, Second Mile and, you know, and  
25 being -- pretending to be an advocate for children. So

1 that was his coverup, and so that's what I call playing  
2 defense.

3 MR. DILLEN: Yeah.

4 MR. SHUBIN: He's a strategist. He's no dummy.  
5 He's one of the greatest defensive strategists, you  
6 know, in the history of college football.)

7 MS. HABIB: John, where are you? I just can't  
8 take it.

9 MR. ZIEGLER: Thank you for laughing at that one,  
10 Liz, because I can't contain myself. But he --

11 MS. HABIB: Anybody who believes anybody as a  
12 football coach is some mastermind -- and don't tell me  
13 Bill Belichick. It's not that hard, people. It's just  
14 a little studying, that's all it is. Please, what a  
15 joke.

16 MR. ZIEGLER: But more importantly, the two  
17 skills are completely different.

18 MS. HABIB: Different, yes.

19 MR. ZIEGLER: And not only that, but if Jerry  
20 Sandusky was a brilliant defensive strategist, how the  
21 fuck did he stay with Joe Amendola? How the fuck did --

22 MS. HABIB: Right.

23 MR. ZIEGLER: How the fuck did he tell Matt  
24 Sandusky that A[REDACTED] M[REDACTED] had flipped on him? I mean --

25 MS. HABIB: How did he make millions of dollars

1 as a football coach somewhere --

2 MR. ZIEGLER: Okay. Well, but why in the world  
3 did he do the Bob Costas interview and couldn't answer  
4 whether or not he's a god. He's sexually attracted to  
5 young boys.

6 MS. HABIB: That was strategy. That was a great  
7 strategy by him on national television.

8 MR. ZIEGLER: I mean, it's -- AJ, what was your  
9 reaction when you heard him say that?

10 MR. DILLEN: Truthfully, I just -- I was just  
11 stunned. Like, I'm like, this -- Jerry is no  
12 mastermind. If anybody's a mastermind, it's me for  
13 doing what I'm doing. Like -- but yeah, I just -- Jerry  
14 has never struck me as somebody who has the capability  
15 to be a mastermind. I mean, he's not been a mastermind  
16 towards his own case and his own well being, so....

17 MS. HABIB: Hey, AJ, I hate to break this to you,  
18 and I don't mean this in a bad way, but you're not a  
19 mastermind. What this proves is how easy it was to do.

20 MR. ZIEGLER: That's true.

21 MR. DILLEN: Right, right.

22 MS. HABIB: How easy it was to do. And what you  
23 are is you at least had the courage to do that, and  
24 that's what it is, you had courage.

25 MR. ZIEGLER: Right. So, but the key, and I

1 agree with that, but the key parts of this are that  
2 we've just heard that Shubin's basis for belief --  
3 again, this is a guy who represented at least nine or  
4 ten of these accusers, the key accusers, several of them  
5 at trial, he should have massive amounts of evidence at  
6 his fingertips -- his belief is I knew because he  
7 wouldn't have spent that much time with kids and because  
8 he was a brilliant defensive coordinator. That's the  
9 basis.

10 MS. HABIB: Ah, he's a mastermind strategist.

11 MR. ZIEGLER: So, therefore, he must be guilty.  
12 And then that, to me, immediately I go, "Okay, wow, the  
13 level of rationalization here" --

14 MS. HABIB: But, I mean, speaking of conspiracy,  
15 I mean, you know, he brought up this is why he formed  
16 The Second Mile, so his entire -- he spent his entire  
17 life, everything he did, is setting up a life so he  
18 could abuse kids. He brought in wealthy guys, like, you  
19 know, to fund his Second Mile --

20 MR. ZIEGLER: And he got away with it for 40  
21 years because he was a great defensive coordinator.

22 MS. HABIB: Yes, 40 years. You know, there  
23 weren't any secretive whispers that he was doing this  
24 for most of, if not all, of that time.

25 MR. ZIEGLER: Right, not one of these, not one of

1 these kids, once they had become an adult, decided to  
2 tell anybody about any of this because of his amazing  
3 strategy as a defensive coordinator.

4 MS. HABIB: Yeah.

5 MR. ZIEGLER: Okay, so let's go to a couple more  
6 clips from Shubin, AJ. We have one clip here where,  
7 just to be clear, since I want to make it -- and it's  
8 obvious from the fact that this took three years, that  
9 they believed you, but we have Shubin on tape telling  
10 you proactively that he believes your story and that he  
11 would never believe Jerry Sandusky over someone like  
12 you, and here's what that sounded like.

13 (Audio clip was played:

14 MR. DILLEN: (Inaudible) I think we discussed it.  
15 You know, like I said (inaudible,) it was my own self  
16 (inaudible.) A long-time thing.

17 MR. SHUBIN: Yeah.

18 MR. DILLEN: My understanding is those claims  
19 weren't vented. So it --

20 MR. SHUBIN: That's what they said but, you know,  
21 I'm not saying -- I don't believe that that's true,  
22 so...

23 MR. DILLEN: And, like, my understanding is you  
24 believe in me and you believe my story.

25 MR. SHUBIN: Yeah. Your story is similar to

1       others, so, you know, I'm not questioning it. If you're  
2       asking me whether I would believe you or Sandusky, I  
3       would say you.)

4                    MR. DILLEN: Okay.

5                    MR. ZIEGLER: All right, so AJ, why did you go  
6       down that path? You just wanted to get him on the  
7       record saying that he believed you?

8                    MR. DILLEN: Yeah. One, I wanted to get him on  
9       the record to say he believed me, too, and if he's  
10      believed in me, anybody that walked in his office he was  
11      going to believe.

12                  MS. HABIB: Oh, yeah.

13                  MR. DILLEN: So I wanted to prove that as well.  
14      Like, that was kind of critical to the outsider's  
15      perspective as well.

16                  MS. HABIB: Well, I mean, the thing is, what's to  
17      believe? He wrote the story for you.

18                  MR. DILLEN: Right.

19                  MR. ZIEGLER: "Yeah, I believe your story, I  
20      wrote it."

21                  MS. HABIB: Yeah, I believe my story.

22                  MR. ZIEGLER: Okay, now, and we've already  
23      mentioned --

24                  MR. DILLEN: Yeah, he wrote his own my story for  
25      me. So, I mean, yeah.

1           MR. ZIEGLER: Now, we already mentioned that one  
2 of the concerns -- and I think you may have alluded to  
3 it there, and if not there, I know you alluded to it  
4 elsewhere, that one of the problems you have about it  
5 being a theoretical case against Penn State is that you  
6 are too old by law. In a normal case --

7           MR. DILLEN: Right.

8           MR. ZIEGLER: In a normal case, you would not be  
9 able to bring a case against Penn State because you were  
10 31 when you came to Andrew Shubin, and the law, at least  
11 at the time in Pennsylvania, was that at 30 years old,  
12 the statute of limitations ends on child sex abuse.

13           And you get into a conversation with Shubin about  
14 that, and this clip is important, one, because it gives  
15 context for why you do not bring a claim, because Shubin  
16 has a strategy that you're going to wait, you're going  
17 to wait to see whether or not the law changes, right? I  
18 mean, because it was debated at the time whether or not  
19 the law might change, correct?

20           MR. DILLEN: Right.

21           MR. ZIEGLER: And so he's going -- I think, I  
22 believe he refers to it as a pause, he's going to pause  
23 your case, your claim against Penn State, because he  
24 doesn't want to bring it and Penn State say, "Look, you  
25 know, we don't need to pay this because he's outside the

1 statute of limitations."

2 And there's a couple of very interesting things  
3 that he mentions while giving context for your case  
4 regarding the statute of limitations. He mentions how  
5 Matt Sandusky was able to be paid, despite the fact that  
6 he's outside the statute of limitations, and then he  
7 also talks about the changes in the Penn State Board and  
8 that clearly there was an alteration in the weather at  
9 the Penn State Board and their willingness to pay these  
10 settlements, which was interesting to me because I was  
11 unaware that there had been this change in the weather,  
12 even though I'd been pushing for it.

13 But here's Shubin talking to you about the issue  
14 of the statute of limitations, Matt Sandusky, and that  
15 changes in the willingness of the Penn State Board to  
16 pay out easy money.

17 (Audio clip was played:

18 MR. SHUBIN: So --

19 MR. DILLEN: (Inaudible) like time, that they  
20 have, like -- there's a timeline or something?

21 (Inaudible cross-talk.)

22 MR. SHUBIN: Well, you -- the statute of  
23 limitations has already run, run when you were 30 years  
24 old. So if we bring a civil claim, they could defend  
25 against it by saying the statute of limitations has run,

1 and that would be the end of it, right? It's simple.  
2 They have not done that with some other clients that  
3 I've had. In the first round, I had clients like Matt  
4 Sandusky, whose statute of limitation also ran.

5 MR. DILLEN: Okay.

6 MR. SHUBIN: But they didn't exclude them, they  
7 settled cases with them. It's a factor in settlement,  
8 so if -- meaning that, you know, if you had a claim that  
9 wasn't subject to the statute of limitations, that claim  
10 was, as a definition -- you know, there's no question  
11 that that's worth a whole lot more than claims that are  
12 time barred, because Penn State's not going to pay a lot  
13 on a claim that's time barred because they know that you  
14 either have to take it or go away, you don't have any  
15 right. You understand?

16 MR. DILLEN: Uh-huh (affirmative.)

17 MR. SHUBIN: So your case is time barred, so  
18 it's, you know, another reason to have a pause here.

19 MR. DILLEN: Right.

20 MR. SHUBIN: You know, in the first round, they  
21 accepted, you know, a couple of time-barred claims, but  
22 they may not be doing that anymore. I don't know.  
23 Everything's different now, so we're still trying to  
24 figure out what they're -- you know, it's a totally  
25 different, you know, set of circumstances now.

1           MR. DILLEN: Right.

2           MR. SHUBIN: So back then, it was they were under  
3 one sort of set of pressures, and now those pressures  
4 have almost reversed, which is the Board of Directors  
5 are a bunch of frickin' idiots who, you know, think that  
6 Penn State shouldn't pay one penny to anybody, you know?

7           So, it's a much more contentious atmosphere now.  
8 Whether that translates into the actual resolving of  
9 cases or not, I don't know. But again, like, to put you  
10 out there without, you know, without having enough, you  
11 know, is just going to set you up for, you know, for  
12 failure, and for being -- and give them a reason to try  
13 to, you know, undermine you, to try to say things that  
14 make you not credible.)

15          MR. ZIEGLER: Now, AJ, you did, during the course  
16 of your conversations with Shubin, you talked about a  
17 lot of different subjects, and one of those that I found  
18 to be particularly interesting, because I'm always  
19 fascinated by what the people involved in this story,  
20 what their theory of the case is, and because, Liz, so  
21 often, the theory of the case is completely inconsistent  
22 with what it should be, and --

23          MS. HABIB: I don't know what you mean by that.

24          MR. ZIEGLER: Well, I'm about to illustrate this.  
25 Because you start talking to him about Penn State and

1 why Penn State has decided to settle all these cases,  
2 and it gets into the subject of Joe Paterno. And now,  
3 let's be clear here, what Andrew Shubin's role here is,  
4 vis-à-vis Joe Paterno, he is A [REDACTED] M [REDACTED]' attorney, who  
5 is the boy in the shower, who was at the heart, the very  
6 heart of the case against Joe Paterno. Because the  
7 McQueary episode is everything, and he's also the  
8 attorney for the 1971, maybe '72, depending on which  
9 story you believe, 1971 accuser, Randy Tice's story,  
10 which became a huge deal because of Sara Ganim's  
11 reporting on that in 2016, even though there was no  
12 video interview of that.

13 But he's the one that implicates Joe Paterno back  
14 in 1971 claiming that he told Joe Paterno, and someone  
15 who appears to be the athletic director, over the phone  
16 in an apparent conference call in 1971 from his home,  
17 which is bizarre, but --

18 MS. HABIB: What a story.

19 MR. ZIEGLER: Okay, but the point is that he  
20 represents two of the most key accusers with regard to  
21 the case against Joe Paterno. Let's play the clip. And  
22 here is Shubin, talking about Penn State and why they  
23 settled, and then his view and his belief, although it's  
24 not that strong, that Joe Paterno was directly involved  
25 in the coverup here, although he ends it by saying what

1 difference does it really make now.

2 (Audio clip was played:

3 MR. SHUBIN: Penn State probably felt that the  
4 client list was a bargain, that things could get much  
5 worse. So, that would be my guess.

6 MR. DILLEN: And I guess I also don't understand,  
7 because we talked about, just briefly, about the -- Joe  
8 and stuff. Like, I don't understand, like, the position  
9 there. Like --

10 MR. SHUBIN: What position?

11 MR. DILLEN: Well, this was if Second Mile was  
12 aware of this and they weren't -- so, they were made  
13 aware of stuff.

14 MR. SHUBIN: Oh, okay.

15 MR. DILLEN: Had they taken action then, this  
16 never even ends up on that end of the spectrum, you know  
17 what I mean?

18 MR. SHUBIN: Oh, there were -- yeah, there were  
19 dozens and dozens and dozens of adults, if not more,  
20 that could have stopped this and didn't, you know? It  
21 wasn't just Joe Paterno.

22 MR. DILLEN: Right, that's how I feel. Like --

23 MR. SHUBIN: I mean, yeah, I believe he was among  
24 them, but it wasn't just him. There were lots of other  
25 people that could have stopped it as well, so, and

1 should have done more, as (inaudible) said.

2 MR. DILLEN: Right, right. And from my  
3 understanding, like, of all the people, that when you  
4 look at, like, what was done, how repercussions or  
5 safety measures were pointed out, it only seems like Joe  
6 was the only one to actually take some sort of action,  
7 you know? And --

8 MR. SHUBIN: But, I mean, that's if everybody,  
9 everybody, you know, it sets, like --

10 MR. DILLEN: And that's sad, because I guess you  
11 would hope that --

12 MR. SHUBIN: Until we know all the facts, it's  
13 hard to judge whether he did, you know?

14 MR. DILLEN: Well, that's a very good point,  
15 until you know all the facts, right.

16 MR. SHUBIN: And he's dead, so you're never going  
17 to know.

18 MR. DILLEN: I mean, I guess (inaudible.)

19 MR. SHUBIN: But I tend to believe the victim.  
20 So I don't care, I don't. You know, that's -- in my  
21 experience, I believe the victims in this case over Penn  
22 State, over, you know, Jay Paterno, over Jerry Sandusky,  
23 so...

24 And the jury believes that as well. So whether  
25 or not Joe knew, when or how or what (inaudible.)

1           MR. DILLEN: No, it's more of like -- that's not  
2 kind of what I'm pointing out. What I'm pointing out is  
3 that of all the people that had access to deal with this  
4 stuff (inaudible) others are useless, right? None of  
5 them, not one single one out of everyone, lifted a pinky  
6 to try and stop it, at least to date.

7           MR. SHUBIN: We don't know that. We don't know  
8 that, but I believe, I believe you're -- yeah.

9           MR. DILLEN: As you said, in fact, or to say  
10 differently, sure, but I'm just talking in the present  
11 tense, the present now, of what we do know.

12          MR. SHUBIN: Yeah, yeah.

13          MR. DILLEN: And hopefully maybe, like  
14 (inaudible) or whatever, you know, like, however that  
15 pans out. But I was just talking (inaudible) so what I  
16 don't understand is how could so much blame be centered  
17 around one individual when there are multiple  
18 individuals within that room that had every right to  
19 (inaudible.) Every right to make claims and they failed  
20 to do so.

21          Even on my end, and what I see from others, you  
22 know, it's just, like, they were obligated at all but  
23 they're not being held accountable for that, you know?  
24 And one of those people is (inaudible) you can find him  
25 in multiple (inaudible) with multiple people, you know?

1 MR. SHUBIN: Right.

2 MR. DILLEN: And he's not the one. There's local  
3 businessmen that had an obligation to report it --

4 MR. SHUBIN: I mean, I couldn't agree with you  
5 more. I think that there were many, many levels -- and  
6 like sometimes, like if the team doesn't perform well,  
7 the coach gets fired. If something bad happens, you  
8 know, many people believe it's the coach's fault, many  
9 people believe that, you know, Paterno, you know, was a  
10 micromanager and he knew everything that went on there.

11 I didn't know the guy, so, you know, I didn't --  
12 like, I don't get it. I don't have his side of the  
13 story. However, you know, in my view, I believe that,  
14 you know -- I believe the victims in this case, even the  
15 ones that say that they reached out to him. I don't --  
16 you know, like, do I have a videotape or an audio tape?  
17 You know, don't we all wish we did. But, you know, it's  
18 almost an academic point of view, like, what does it  
19 matter anymore?)

20 MR. ZIEGLER: Now, I found that last statement to  
21 be amazing, right?

22 MS. HABIB: Wow. Right?

23 MR. DILLEN: Right.

24 MR. ZIEGLER: It's an academic subject, what does  
25 it matter anymore whether or not Joe Paterno really was

1 guilty or not?

2 MS. HABIB: Wow.

3 MR. ZIEGLER: But there's a lot to unpack there,  
4 and I want to make sure that -- because some of it's  
5 subtle. I do think it's interesting that once again,  
6 the phrase that is the basis of the name of this  
7 podcast, which of course is "With the Benefit of  
8 Hindsight," comes back to haunt Joe Paterno once again  
9 and also gets mischaracterized because Shubin says -- he  
10 quotes Paterno there as saying, "He should have done  
11 more, he said that himself." Well, that's not what Joe  
12 Paterno said.

13 Joe Paterno said, "With the benefit of hindsight,  
14 I wish I had done more," which is very different than  
15 that, and the "benefit of hindsight" part gets lost and  
16 forgotten, and that's part of why that's the name of  
17 this podcast.

18 But it's incredibly important to remember that  
19 when he says, "I tend to believe the victims," he's  
20 talking about Randy Tice, because that's who he  
21 represents. And we're going to get to Randy Tice in a  
22 minute, but the larger theory here, Liz and AJ, which I  
23 find bizarre, is his theory is many, many people had the  
24 opportunity to stop this, yet they don't, and it doesn't  
25 click in his mind that wait a minute, how implausible is

1 that?

2           In other words, isn't it possible that nobody did  
3 anything because no one knew, because there was nothing  
4 to know?

5           MS. HABIB: And, by the way, if many, many people  
6 could have stopped this and they failed or they turned a  
7 blind eye, why aren't they charged with anything? By  
8 the way, why aren't they on trial? Why aren't they  
9 brought forward? This is a bunch -- it's a fabrication.  
10 Come on.

11          MR. ZIEGLER: But it never -- but AJ, it clearly  
12 -- I find it to be a contradiction, and I don't know if  
13 you agree, Liz. If you so strongly believed that there  
14 was this massive coverup and --

15          MS. HABIB: Right, that's what this is, a huge  
16 thing that he's claiming.

17          MR. ZIEGLER: But he's still not 100 percent sure  
18 that Paterno was involved. He says, "Well, we'll never  
19 know, he's dead. What difference does it make now? I  
20 tend to believe my accuser." He doesn't name Randy  
21 Tice. But, AJ, do you see where I'm going with that?

22          MR. DILLEN: I do see where you're going with  
23 that and, you know, I think to confirm that, both Shubin  
24 and Macnab had said, out of their mouth, nobody came  
25 forward, the police searched after them. So how is it a

1 coverup just in that regard? Like, how are people  
2 supposed to stop something that you both admit to nobody  
3 knew about, you know? Like, you can't stop that.

4 And in regards to Joe Paterno, Joe Paterno, first  
5 off, is not a trained -- in any way in child abuse.  
6 Second of all, like, that, you know, as you pointed out,  
7 John, it's -- he's admitting he doesn't even know. So,  
8 how can somebody stop something they're unaware of?  
9 There was no coverup in this case, absolutely none.

10 MS. HABIB: But can I say this, though? What he  
11 said is -- he used a football, he used a sports analogy  
12 there, and he said that, you know, he's the head coach,  
13 the buck stops with the head coach. This isn't about  
14 winning and losing a game, this is about evidence and  
15 proof and truth and a different thing. It can't be that  
16 -- well, Joe Paterno then, in this case, represents all  
17 of everybody, everything, the buck stops with Joe  
18 Paterno in central Pennsylvania.

19 MR. ZIEGLER: Right.

20 MR. DILLEN: Right.

21 MS. HABIB: That doesn't make sense at all.

22 MR. ZIEGLER: And to what AJ just said, though,  
23 here's a guy who represents the most prominent victim  
24 who claimed to have told Joe Paterno, completely  
25 implausibly in 1971, about his abuse by Jerry Sandusky,

1 and even Shubin's not sure, so (inaudible.)

2 MS. HABIB: Because it doesn't matter. It's an  
3 academic subject.

4 MR. DILLEN: He's not sure at all if Joe Paterno  
5 knew. So, I mean, that's --

6 MR. ZIEGLER: Yeah, exactly. If he's not sure,  
7 how can anybody possibly be? But I guess I want to make  
8 sure we don't lose the point because, AJ, you're trying  
9 to look at this from both perspectives of even if Jerry  
10 is guilty, Joe Paterno is still innocent --

11 MR. DILLEN: Correct.

12 MR. ZIEGLER: -- even though you know in your  
13 view very strongly that Jerry is innocent and that,  
14 therefore, everyone's innocent. What I can never get  
15 over is how, when given two possibilities -- so, in  
16 Shubin's mind, there are two possibilities here, I  
17 guess. One is that everybody was in on this in some  
18 way, shape, or form.

19 MS. HABIB: Everybody, right.

20 MR. ZIEGLER: But he never considers the  
21 possibility that, wait a minute, isn't it possible that  
22 it's more plausible that no one knew anything because  
23 there was nothing to know?

24 MR. DILLEN: Correct.

25 MR. ZIEGLER: That never even seems to dawn on

1 him because his investment is that deep. Now, AJ, you  
2 know, I've criticized you a lot for the way you've  
3 handled things in certain ways. I've referred to you as  
4 James Bond meets Barney Fife, and this clip here might  
5 be the ultimate example of James Bond meets Barney Fife,  
6 because here you do something really smart and risky,  
7 where you decide to effectively confront Shubin about  
8 Randy Tice.

9 Now, we don't know Randy Tice's name at this  
10 point, but you're referring to him as the 1971 accuser.

11 MR. DILLEN: True.

12 MR. ZIEGLER: And in a fairly strong manner,  
13 because that's now been public, this is past 2016, in a  
14 fairly strong manner, you decide to tell Shubin you  
15 don't believe Randy Tice. Again, that's his own client.

16 Now, I'm curious, before we hear the clip, was  
17 this a spur-of-the-moment decision on your part? You  
18 know, what was the thinking in deciding to do this?

19 MR. DILLEN: To be honest, it was a spur of the  
20 moment. I needed that information. I felt like that  
21 was important. And I was kind of offended by the '71  
22 accusation, considering that puts it on campus around  
23 the time of a family relative who was a coach during  
24 that time. And since I knew the makeup, which I won't  
25 get into, I knew the makeup of the campus in concerns to

1 football and sports, I knew he was lying. I knew hands  
2 down he was lying.

3 So his story makes no sense, and there is a great  
4 discrepancy in where he's saying that things took place,  
5 so I just knew he was lying. I mean, the whole story is  
6 just concocted and bullshit.

7 MR. ZIEGLER: All right. Well, it was -- the  
8 James Bond part was a great idea, and risky to go down  
9 this path, and then the Barney Fife part is you won't  
10 shut the fuck up and let him talk. So, unfortunately, I  
11 don't know if we get as much out of this as we might  
12 have. And, in fact, I want you to listen carefully  
13 because I -- and we'll talk about this after we hear the  
14 clip -- it sounds to me like Shubin gets really  
15 irritated and almost threatens to drop you as a client  
16 because of this interplay here.

17 But here's what it sounded like, and this is, to  
18 be clear, this is just after the Paterno conversation  
19 that we just previously heard a few moments ago.

20 (Audio clip was played:

21 MR. SHUBIN: So --

22 MR. DILLEN: Well, I think it matters to the  
23 victims and -- future victims and past victims of child  
24 abuse, to be able to have some sort of understanding and  
25 some sort of hope that things will be handled properly,

1 you know?

2 MR. SHUBIN: Well, that I agree with.

3 MR. DILLEN: It's, like, I guess I take issue  
4 with the '71 claim mainly because --

5 MR. SHUBIN: With what claim?

6 MR. DILLEN: The '71 and '72 claim. Because they  
7 make absolutely, utter, on the basis of just general  
8 knowledge, no sense.

9 MR. SHUBIN: All right.

10 MR. DILLEN: One of the claims in there states  
11 that -- you know what I mean?

12 MR. SHUBIN: Well, I mean, I don't. It's not --  
13 I don't -- like, I would understand why you feel that  
14 way.

15 MR. DILLEN: It just makes no sense. So it's  
16 doing an injustice to my case, it's doing an injustice  
17 to future individuals who are abused because it's going  
18 to leave the perception open that as long as you just  
19 make a statement, it makes it true, you know, in the  
20 public perception. And that's why I take issue with it.  
21 Because I will never be able to forget the abuse, so --  
22 and I won't be able to ever live right because of it,  
23 and somebody makes a claim like that, that has no  
24 factual evidence, even their own words don't make sense,  
25 like, that's like saying, "Oh, well, you know, I went to

1 the store yesterday but the store wasn't even in  
2 business yesterday, it just opened up today." So, you  
3 know, it just makes no sense at all, and I feel insulted  
4 and degraded even more by it, you know?

5 MR. SHUBIN: Right.

6 MR. DILLEN: And that's, I guess -- I guess my  
7 question to you is, you state that you believe these  
8 victims --

9 MR. SHUBIN: I understand. I understand what --  
10 yeah, I do.

11 MR. DILLEN: And, apparently, you are a lawyer  
12 for one of them; is that correct?

13 MR. SHUBIN: So, I mean, I can't really say. So,  
14 I'm not at liberty to say a lot. So, a lot of it is  
15 confidential.

16 MR. DILLEN: Right. But you believe -- you would  
17 believe that, even with the example I gave?

18 MR. SHUBIN: I have -- well, I have come to  
19 learn, you know, in this process, that victims typically  
20 don't come forward and lie about something like child  
21 abuse. Whether -- was I there? I don't know. But like  
22 what's my opinion matter at the end of the day?

23 MR. DILLEN: I'd say it matters a lot.

24 MR. SHUBIN: I'm a lawyer. I get hired by  
25 people. Like, I'm not a commentator, I'm not a

1 policymaker. I'm a lawyer who represents victims and I  
2 fight for them, you know? And if I don't believe they  
3 have a viable claim, for whatever reason, I avoid the  
4 case, you know?

5           Like, even in your situation, where I have no  
6 reason to disbelieve anything you've told me, it may not  
7 be -- you know, so it may not be a good fit at this  
8 point, you know? So, it's -- I tend to believe that  
9 institute, that Penn State and the players, the powers  
10 that be, allowed Jerry, you know, all the room to  
11 operate he needed and that, you know, this was the  
12 result.

13           So, you know, otherwise he wouldn't have had  
14 access to children, he wouldn't have had access to Penn  
15 State's players. Everybody's entitled to their opinion.

16           MR. DILLEN: But he would have --

17           MR. SHUBIN: And I totally, I totally understand  
18 what you're saying, right? That you're saying, you  
19 know, like, that what's been -- what you know about  
20 other claims, you feel like people are saying, "Well,  
21 you know, those aren't true, and everybody who's coming  
22 forward is lying." There are people who believe there  
23 are no victims, you know, that people will say the same  
24 thing about you, that you don't have corroborating  
25 evidence and you don't -- you know, and they'll say the

1 same thing about you.

2           Which is why when we talked, I talked, you know,  
3 about how important that is, corroboration, because that  
4 was, you know, something, in my view, that is really  
5 critical to bringing these cases.

6           A lot of people who came to me were people that  
7 the state police identified. They wanted nothing to do  
8 with this, and the state police identified them as  
9 victims because Jerry was keeping, you know, log sheets  
10 that identified people who the state police thought were  
11 victims. They were content to let sleeping dogs lie.  
12 They didn't want to be identified. So, you know,  
13 it's --)

14           MS. HABIB: Wow.

15           MR. ZIEGLER: All right. Now that last part  
16 there, again, there's a lot to go through.

17           MS. HABIB: Yes, I'd say there is, too.

18           MR. ZIEGLER: But that last -- I want to make  
19 sure we clean up that last part, because this idea that  
20 Jerry was keeping logs --

21           MS. HABIB: Yes. What's that claim? What is  
22 that?

23           MR. ZIEGLER: All right, okay, this is the  
24 classic situation in his case where everyone presumes  
25 guilt, and so any connection to Jerry Sandusky and those

1 that are claiming abuse is ipso facto proof of abuse.  
2 There was a list of names that Jerry Sandusky had, not  
3 all of whom were people who ended up being accusers, but  
4 some of the accusers were on the list. Now, Jerry is --  
5 Yeah, AJ, you want to say something?

6 MR. DILLEN: Yeah. See, I was confused, to be  
7 honest, at that point, what he meant by a list. At that  
8 point, I had never -- I either never heard of the list  
9 or I had and just didn't connect it at that point, and  
10 so I was thrown off by that.

11 MR. ZIEGLER: Well, my understanding of this  
12 list -- and there has been some news coverage of this --  
13 according to Jerry, his best understanding and  
14 recollection of this is he was creating a list -- and,  
15 Liz, you might appreciate this because you've dealt with  
16 sports figures -- is he was creating a list of people  
17 for whom he could get shoes from the shoe company that  
18 he still had a relationship with, and that some of --  
19 this is shocking. Those that were closest to him would  
20 be on the list to get shoes.

21 MR. DILLEN: Correct.

22 MR. ZIEGLER: And that those that were closest to  
23 him would also end up being those who were identified by  
24 police as potential accusers. And so it's -- you know,  
25 everything is upsidedown, everything is reversed where,

1 "Oh, my gosh, we know he's guilty; so, therefore, if we  
2 find the names of the accusers anywhere in his  
3 recordkeeping, this is somehow evidence of abuse." So  
4 I --

5 MS. HABIB: Which doesn't make sense, John.

6 Because he's the guy who had The Second Mile, who was  
7 around these kids, there's going to be lots of things  
8 that he has from these kids, clearly, right?

9 MR. ZIEGLER: Right. Well --

10 MS. HABIB: You can't just assume everything is,  
11 you know?

12 MR. ZIEGLER: Well, one of the worst, Liz, and  
13 I'm glad you mentioned that, is that there were  
14 stories -- because, of course, at the beginning of this,  
15 when facts might have still mattered, I'm sure the  
16 prosecution was concerned about the fact there was no  
17 pornography, right, and that people were going to  
18 wonder, "Well, where's the pornography?"

19 And so there was this story leaked that photos of  
20 Jerry with the accusers were found in his house, which  
21 is --

22 MS. HABIB: Yes, there was, I remember the story,  
23 which makes everybody go, "Dun, dun, dun."

24 MR. ZIEGLER: Right.

25 MS. HABIB: Like you say, I mean, it's a very

1 terrible thought. They didn't say they were naked  
2 photos, they didn't say -- you know.

3 MR. ZIEGLER: They're in frames on the desk.

4 MS. HABIB: Right, because -- right, because  
5 they're part of the family. But that part of the story  
6 got lost, you know?

7 MR. ZIEGLER: Right, right. Okay.

8 MS. HABIB: No reporters followed through.

9 MR. ZIEGLER: Right. Of course, not because we  
10 wanted to believe what we wanted to believe.

11 MS. HABIB: I'm at fault.

12 MR. ZIEGLER: But all right, so I guess so  
13 dealing with that aside, let's go back to, AJ, your  
14 interaction with Shubin there.

15 With regard to '71, I found it fascinating that  
16 on two occasions at least he tells you, "I totally  
17 understand your concerns" about the '71 story, right? I  
18 mean, do I have that correct?

19 MR. DILLEN: You have that correct. That's  
20 exactly what he said.

21 MR. ZIEGLER: Now, that's extraordinary, is it  
22 not? I mean, he's the guy's lawyer and he's saying, "I  
23 totally understand your concerns." But then he  
24 indicates what I perceived as a great deal of  
25 insecurity, to where it sounds to me like he's ready to

1 drop you as a client because of your concerns that he  
2 totally understands. Is that the way you interpreted  
3 that, AJ?

4 MR. DILLEN: Yeah, yeah. I mean, I thought for  
5 sure he was going to probably drop me as a client.  
6 However, like in regard to I know you say I talked too  
7 much there, I had -- the way I was operating is I didn't  
8 want to forget to ask something important, so I have a  
9 tendency to ramble.

10 And I think that even though that is a terrible  
11 job by me, to keep running and rambling, I think it  
12 helped because in the end, I got the answers I needed  
13 from him.

14 MR. ZIEGLER: Well, it wasn't terrible. We did  
15 get some good stuff there. In fact, he says, you know,  
16 "I have no reason to believe your story," right?

17 MR. DILLEN: Right.

18 MR. ZIEGLER: I mean, he says, "I have no reason  
19 to believe your story, but we may not be a good fit  
20 going forward."

21 MR. DILLEN: Correct.

22 MR. ZIEGLER: "Because it sounds like you're a  
23 little too skeptical of my own clients." And then he  
24 also says, "I have come to learn," I love this part, "I  
25 have come to learn," I presume because of his

1 involvement in this case, "That people don't lie about  
2 sexual abuse."

3 MS. HABIB: That's just -- I heard that, too, and  
4 I was like, "Whoa, what the heck is that?" People lie  
5 about everything.

6 MR. ZIEGLER: No, what he is --

7 MS. HABIB: I know what he's saying, uh-huh  
8 (affirmative.)

9 MR. ZIEGLER: But no, here's what he should have  
10 said: "I have come to learn that in this case, no story  
11 of abuse will be disbelieved, including yours."

12 MS. HABIB: Exactly. So don't worry, don't  
13 worry, don't worry about it. No one lies about this, we  
14 know that. Yeah.

15 MR. DILLEN: Including (inaudible.)

16 MR. ZIEGLER: Okay, but just to be clear, and  
17 he's saying this to someone who he says he believes, who  
18 is telling him a fake story.

19 MR. DILLEN: Again, correct.

20 MS. HABIB: Right. But then he says he might not  
21 be a good fit because he's a little suspicious. I mean,  
22 come on.

23 MR. ZIEGLER: No, but, like, this cannot be  
24 emphasized enough: he is saying I have come to learn no  
25 one lies, while sitting in front of someone who is lying

1 to him. Right, AJ?

2 MS. HABIB: Yes, Yes.

3 MR. DILLEN: On purpose, yeah.

4 MR. ZIEGLER: On purpose, in a way that he says  
5 has no corroboration, yet he has no reason to disbelieve  
6 the story. I mean, you can't make this up. You cannot  
7 make this up.

8 MR. DILLEN: You honestly can't. Can I also  
9 point out something about the corroboration? I think  
10 this is important.

11 So in that meeting, he's, of course, trying to,  
12 which that sounds weird, he's trying to corroborate his  
13 concocted version of the story as well later on it,  
14 which is why he asked for my mother to come in and which  
15 is why he requested The Second Mile records and so  
16 forth.

17 So it dawned on me, how many of his victims did  
18 he do this with as well? Like, I was just like, "Yo,  
19 this is complete BS."

20 Like, you can't -- you know, I get why you would  
21 want to get corroborating evidence, but at the same  
22 time, like, you know, if you're telling somebody your  
23 son was abused or whatever, like later on, I just -- I  
24 just didn't get it.

25 MS. HABIB: He wants to know that you're

1 believable, can you sell it.

2 MR. DILLEN: Like, it's almost like he needed to  
3 corroborate his own story, so he needed evidence for  
4 that.

5 MR. ZIEGLER: But I think what you're saying, AJ,  
6 which is a really good point, he's asking for you to  
7 corroborate a story that's not your story.

8 MR. DILLEN: Right.

9 MR. ZIEGLER: So how can you corroborate a story  
10 that he made up? I mean --

11 MR. DILLEN: Exactly (inaudible.)

12 MS. HABIB: No, he needs mom to make you more  
13 believable. Oh, well, his mother. You know, it's a  
14 believability issue.

15 MR. ZIEGLER: Right, and we're going to get to  
16 the mom in just a --

17 MR. DILLEN: Right.

18 MR. ZIEGLER: We're going to get to the mom in  
19 just a moment here, because she does a great job in  
20 coming forward and helping out with corroboration here.

21 But also, we've already mentioned that you had  
22 the letter from Jerry Sandusky from prison, which you  
23 completely butchered and panicked over --

24 MS. HABIB: (Inaudible.)

25 MR. ZIEGLER: -- but he viewed that as

1 corroboration as well. And plus, the most important  
2 corroboration, this cannot be emphasized enough, is you  
3 were a Second Mile kid, and that was everything, right?

4 MR. DILLEN: Right.

5 MR. ZIEGLER: I mean, at the very beginning of  
6 this, that was all they cared about, can you prove you  
7 were in The Second Mile. So they went back and got your  
8 Second Mile records, and that's why you were taken  
9 seriously. That's all that it really took, right?

10 MR. DILLEN: That is correct. If you couldn't  
11 validate that you were a Second Mile kid, they  
12 weren't -- you were -- I know we wouldn't have gone  
13 forward, which is why I knew I was perfect for this  
14 little sting. Because I knew I was Second Mile and I  
15 had a gut feeling that something with those records  
16 played a critical role.

17 And the reason for that is, unlike if the police  
18 went out and found these kids, how the heck did they  
19 know they were Second Mile if they didn't have records?

20 And so when you go to Shubin and you get these  
21 records, you have to sign a waiver for them to send it  
22 to you, and then when I saw my records, I literally saw  
23 my records for the first time because of this thing.  
24 There were redacted versions of -- like, there was  
25 redacted of the camper list, of who was there and where

1 I -- what my bed was.

2           But I did remember even prior to this  
3 (inaudible.) So, you know, I wanted to really find out  
4 how important these records were. And, John, you're  
5 right, like, it really mattered if you could prove you  
6 were a Second Mile kid. And at that point, all you had  
7 to do was concoct a story. That's really as easy as it  
8 was.

9           MR. ZIEGLER: So let's go back to an important  
10 part of this process, which was Shubin did do some  
11 semblance of vetting of you. He did make sure you were  
12 part of The Second Mile. He got your Second Mile  
13 records. There was even, you know, some letters that  
14 you had written as a Second Mile kid. There was a, I  
15 think, a football card that somehow got in your records,  
16 which you've all sent to me, and which, you know, all  
17 that really did was prove that you were part of The  
18 Second Mile. That's the only thing that that did, but  
19 that made you eligible for a potential payout because  
20 that's all Penn State was paying.

21           But as far as actual vetting, the only thing  
22 Shubin really did was he asked to speak to your mother.

23           MR. DILLEN: Yes.

24           MR. ZIEGLER: And this was a key moment in this  
25 process, because we didn't know how your mother was

1 going to respond. Now, your mother was someone who was  
2 a big supporter of Jerry Sandusky, believed him to be  
3 innocent. So when Shubin asked to speak to your mother,  
4 and you go to her, because you and I talked about this,  
5 I said, "Well, you know, your mom's willing to do this."  
6 What was your mom's reaction to you asking her to come  
7 with you, to go into a lawyer's office to verify that  
8 she believes that you had been abused by Jerry Sandusky?  
9 How did that go down?

10 MR. DILLEN: She thought I was crazy, like  
11 literally thought I was, like, losing it. And I was  
12 like, "No, I need you to do this for me," and I was  
13 like, "Listen, there is really no way to potentially  
14 prove Jerry's wrongfully convicted because everybody's  
15 against it, as you know."

16 And I'm like, "Mom, I need you to come in here,  
17 because he wants you," and I'm like, "I need you to talk  
18 to him," and then just I guess I told her, like, be  
19 honest or whatever, and then I kind of told her -- I  
20 informed her a little bit about, like, what I had said  
21 about being abused. And so she went in, she did a  
22 stellar job.

23 MS. HABIB: She did?

24 MR. DILLEN: I was actually shocked. Yeah, she  
25 did a stellar job. She even stood up -- what's crazy is

1       she's standing up for Dottie while Shubin's trying to  
2       explain to her that, like, I was abused and did you know  
3       anything, and she says, "No, I never heard anything,"  
4       you know? I've got that. I haven't delivered that to  
5       John yet.

6                 But yeah, she does a stellar job. Like, it's  
7       just crazy that he's -- and then he's like, "Well, you  
8       know, some of the things that happened to your son are  
9       similar to what other victims have said." So it's just  
10      -- it's bizarre, honestly, that --

11          MR. ZIEGLER: So your mom not only was willing to  
12       do it, but she actually knocked it out of the park, and  
13       so at that point, Shubin's completely convinced, right?  
14       I mean, because your mom is taking part in this, right?

15          MR. DILLEN: Yeah. And after Shubin left, she  
16       and me alone, she's like, "You're not crazy." I was  
17       like, "I know." She's like, "You know, I'm 100 percent  
18       convinced Jerry is wrongfully convicted now."

19                 And she always had that feeling, even at trial.  
20       She was at trial, so she sat right next to Dottie  
21       Sandusky at the trial, so -- she sat more days than I  
22       actually did, actually, so...

23          MR. ZIEGLER: So to be clear, having gone through  
24       this process of meeting Shubin, it was the thing that  
25       convinced her with 100 percent certitude that Jerry was

1       innocent.

2           MR. DILLEN: Yes.

3           MR. ZIEGLER: Because she saw firsthand what a  
4       scam this was.

5           MR. DILLEN: Right.

6           MR. ZIEGLER: Okay. Now, there was a moment when  
7       your mom meets with Andrew Shubin that is rather  
8       hilarious. That, you know, for some much-needed dark  
9       humor we're going to put into this podcast, because  
10      Shubin warns you and your mother about a particular  
11      person, right?

12        MR. DILLEN: Right.

13        MR. ZIEGLER: And who is that person?

14        MR. DILLEN: You, John.

15        MR. ZIEGLER: So here is the audio of Andrew  
16      Shubin speaking to AJ and his mom, making sure that they  
17      are aware of this nefarious person in Los Angeles, John  
18      Ziegler, and to stay away from him.

19           (Audio clip was played:

20        MR. SHUBIN: So, I'm warning you that (inaudible)  
21      John Ziegler, I don't know if you've met or heard of  
22      him, but --

23        UNIDENTIFIED SPEAKER: Pardon me?

24        MR. SHUBIN: A guy named John Ziegler, who is the  
25      one that (inaudible) did you see that? He actually did

1 an interview on TV --

2 UNIDENTIFIED SPEAKER: (Inaudible)

3 MR. SHUBIN: Anyway, he did an interview  
4 (inaudible) radio talk show guy (inaudible,) either one  
5 of you.

6 UNIDENTIFIED SPEAKER: (Inaudible)

7 MR. SHUBIN: Yeah. I mean, that's us to you, but  
8 (inaudible.)

9 MS. HABIB: I didn't really understand. All I  
10 heard was your name. What did he say about you?

11 MR. ZIEGLER: AJ, can you -- the audio is pretty  
12 bad there. Can you recall what Shubin was saying to  
13 you and your mother about me, and how it is that you  
14 kept from laughing out loud?

15 MR. DILLEN: Oh, it took a lot to not laugh out  
16 loud, but I had to maintain my thing, the case. So he  
17 basically just asked my mom and me, "Have you ever heard  
18 of this guy, John Ziegler? He did this TV show," and --  
19 he said it twice, and he's been on TV, and pretty much  
20 to not go near you, so to speak, or not to talk to you  
21 because then you might twist the story or you might say  
22 negative things about the victims. I don't know.  
23 You've got to remember (inaudible) victim. So he's  
24 basically wanting me to stay away from you because you  
25 might discredit my story.

1           MR. ZIEGLER: And your mom does a great job of  
2 pretending she has no idea who I am.

3           MR. DILLEN: She does.

4           MS. HABIB: The fact that you've entered into  
5 this, you know, like here's this attorney, don't talk to  
6 John Ziegler. That you've entered into this, that you  
7 become such an influence to something in this case that  
8 an attorney would mention your name, don't talk to this  
9 guy, is really significant. It's so very, very  
10 significant.

11          MR. ZIEGLER: Well, why would you worry about me?

12          MS. HABIB: Exactly. What -- I mean, even if you  
13 did interfere, if you have a story to tell -- and look,  
14 if AJ's, like, been a victim and he's got a story to  
15 tell, what does John Ziegler have to do with it?

16          MR. ZIEGLER: No, but to me, it goes deeper than  
17 that, Liz.

18          MS. HABIB: Yeah, no, way deeper than that, of  
19 course.

20          MR. ZIEGLER: No, no, no. What I mean is, if I'm  
21 full of shit, why are you even worried about me?

22          MR. DILLEN: Right.

23          MS. HABIB: Right, you're nothing but a marble.  
24 I mean, who cares, right?

25          MR. ZIEGLER: Right. Unless there's part of him

1 that's concerned that, you know --

2 MS. HABIB: Of course, we know why.

3 MR. ZIEGLER: Right, that I'm onto him.

4 MS. HABIB: And everybody else.

5 MR. ZIEGLER: Right. Okay, so you somehow don't  
6 laugh out loud when Shubin warns you about me, and your  
7 mom plays along brilliantly, and so he's completely  
8 convinced that you're a real victim of Jerry Sandusky.

9 And as part of all this, now, to be clear, the  
10 clips we're playing, these are all in different sessions  
11 over a three-year period of time, and during this time  
12 period, you're going to a therapist. You're going to a  
13 therapist, that is his go-to therapist, by the name of  
14 Cynthia Macnab, and this is all being paid for by Penn  
15 State, through their insurance company.

16 And here is Shubin explaining to you the payment  
17 process with regard to Penn State, the insurance  
18 company, and the therapy that you're engaging in to help  
19 you get over your abuse by Jerry Sandusky which, to be  
20 clear, never actually happened.

21 MR. DILLEN: Right.

22 (Audio clip was played:

23 MR. DILLEN: So, and you said, like, some Premier  
24 Group or something (inaudible.)

25 MR. SHUBIN: They have -- Penn State has hired a

1 group, I know, I forget the name, but who they have  
2 empowered to pay for the counseling of Sandusky victims.  
3 So this group would get some information from Cindy  
4 Macnab about the service issues, right? I don't know if  
5 she gets your name or not. I don't know.

6 MR. DILLEN: All right.

7 MR. SHUBIN: And that would not be transmitted to  
8 Penn State, so they wouldn't know.

9 MR. DILLEN: So they wouldn't know my name?

10 MR. SHUBIN: They wouldn't know.

11 MR. DILLEN: Okay.

12 MR. SHUBIN: And, you know, that -- and they  
13 would pay for your counseling. That's what they've said  
14 publicly.

15 MR. DILLEN: Okay. And you don't know the name?

16 MR. SHUBIN: I think it's called Premier, but  
17 Cindy knows what it is, too. They're out of -- it's a  
18 Texas group. They sort of specialize in mass  
19 casualties. You know, if a plane crashed or something,  
20 the airline might hire them to provide services to  
21 victims and their families, so, you know, just to help  
22 them, and that's what Penn State did.

23 MR. DILLEN: Okay.

24 MR. SHUBIN: So, and I know that they have paid  
25 some other bills in this case, not to me but to a

1 provider.

2 MR. DILLEN: Okay.)

3 MR. ZIEGLER: Now, AJ, to be clear, what's  
4 happening there is that Shubin is explaining to you how  
5 it is that you don't have to pay for your therapy and  
6 that Penn State is indirectly paying it through their  
7 insurance company. And this was actually a significant  
8 amount of money when you consider around 100 sessions  
9 over three years, right?

10 MR. DILLEN: Yes, \$15,000.

11 MR. ZIEGLER: Oh, you figured out how much it  
12 was?

13 MR. DILLEN: Uh-huh (affirmative.) \$150 a  
14 session times 100 is \$15,000.

15 MR. ZIEGLER: Okay. Well, so, but you're not 100  
16 percent sure about the 100 number? That makes you sound  
17 like A-[REDACTED] F-[REDACTED], by the way, everything's  
18 (inaudible.)

19 MR. DILLEN: Right, right, I'm not --

20 MS. HABIB: Everything's 100 -- yeah,  
21 everything's rounded up.

22 MR. DILLEN: Right, yeah.

23 MR. ZIEGLER: Okay. But so somewhere in the  
24 vicinity of \$15,000 is what Penn State's insurance  
25 company paid for you to go see Andrew Shubin's

1 therapist, right?

2 MR. DILLEN: Correct.

3 MR. ZIEGLER: Now, so this therapist, Cynthia  
4 Macnab, is a key person. She's one of the "right  
5 people" that -- in fact, she's the key "right person"  
6 that Shubin refers to, to help people understand just  
7 how much they were abused by Jerry Sandusky. And all of  
8 Shubin's accusers went to her, and you know this, right?

9 MR. DILLEN: Yes.

10 MR. ZIEGLER: And part of the reason why you know  
11 this is because there was a group session. I find this  
12 amazing. There was, apparently, a Sandusky victim group  
13 session that she monitored; is that accurate?

14 MR. DILLEN: Yeah, it's accurate, but one added  
15 thing, Janet McCracken was in the room when they were  
16 offering up the group session. What's important about  
17 Janet McCracken is that she is the accuser's therapist  
18 in '98, and she remained his active therapist even up to  
19 trial and into the case.

20 MR. ZIEGLER: Okay. Well, this is new  
21 information to me. So this Sandusky group therapy was  
22 not conducted by Macnab. She just consulted and  
23 basically advised people to go into that group, is that  
24 what happened?

25 MR. DILLEN: Well, it was a group -- yeah, it was

1 a group therapy session made up amongst the Sandusky  
2 victims and Macnab and McCracken both running the group.

3 MR. ZIEGLER: Okay. All right, so they have the  
4 two therapists running the Sandusky group for -- you  
5 know, the Sandusky victim group sessions, and you at one  
6 point were going to participate in the Sandusky victim  
7 group sessions.

8 And this may have been our most unfortunate  
9 blunder in all of this, because you were going to get  
10 the keys to the kingdom here, to be in a group session  
11 with all these con artists, or maybe people who thought  
12 that they were abused and actually weren't. But the  
13 reason why you were given for why you were not allowed  
14 to go to the Sandusky victim group session was  
15 incredibly --

16 MR. DILLEN: Yeah, because I was too angry.

17 MR. ZIEGLER: Yeah. Okay --

18 MR. DILLEN: I was too angry. I was too angry  
19 about my abuse.

20 MR. ZIEGLER: Okay, now, I want to make sure we  
21 get --

22 MS. HABIB: Oh, my goodness, I can't.

23 MR. ZIEGLER: I want to make sure we're very  
24 clear about this because this is one of the smoking guns  
25 in this. So here you are, a fake accuser, Cindy Macnab

1 has given you therapy dozens and dozens of times, you  
2 are told at one point you were going to be recommended  
3 to go to this group session; is that accurate?

4 MR. DILLEN: That's accurate.

5 MR. ZIEGLER: So you were planning on going to  
6 this Sandusky victim group session, and then you get  
7 told, "You know what, this isn't going to happen," and  
8 the reason it's not going to happen is because you  
9 haven't fully dealt with your anger over your abuse.

10 MS. HABIB: Isn't that what group sessions are  
11 for?

12 MR. ZIEGLER: Okay, but -- but I just want to --

13 MR. DILLEN: You'd think.

14 MR. ZIEGLER: AJ, I want to make sure that's what  
15 happened, correct?

16 MR. DILLEN: Yes, that's what happened, correct.

17 MR. ZIEGLER: Now, my first reaction was like,  
18 "Well, hold on a second." Yeah, Liz is right, isn't  
19 that what therapy is for? But more importantly than  
20 that, given the nature of this case is -- hold on a  
21 second. The reason why you appear angry and the others  
22 don't is because they were never abused. They don't  
23 have anything to be angry about because they got paid,  
24 and you haven't been paid. I mean, is that how you  
25 interpreted it?

1           MR. DILLEN: (Inaudible.) Yeah, that's how I  
2 interpreted it, 100 percent sitting there and processing  
3 it in my head, I'm like, "Wow, I'm too angry?"

4           And then as Liz pointed out, like, "Wait. Isn't  
5 that what therapy is for?" And "Why wouldn't you be  
6 angry if you were really abused?" Like, "Why wouldn't  
7 you be angry?" It makes no sense.

8           MS. HABIB: I mean, there are so many questions  
9 here. Was there, in fact, group therapy? Is this real,  
10 or was it some kind of, you know, pretend? Do you know?

11           MR. DILLEN: No, there was a group therapy --  
12 there was an actual group therapy, amongst all the  
13 Sandusky victims, that Macnab had. Which I think, you  
14 know, having a group session, I see why they would do  
15 it, but yeah, that puts everybody in there to hear  
16 everybody's stories and then be able to roll with them,  
17 if you know what I mean. Like, indirectly, you hear  
18 other people's stories --

19           MS. HABIB: No, no, we absolutely know what you  
20 mean, AJ, but what I'm -- when did this happen, John?  
21 Is this is like they've already gotten their money and  
22 they're supposed to be doing groups?

23           MR. ZIEGLER: Right.

24           MS. HABIB: Well, that -- why would anybody --  
25 if we're right about, it --

1           MR. ZIEGLER: Well, apparently, it was disbanded  
2 eventually, right?

3           MS. HABIB: Well, why would they want to do it?  
4 They already had their money. Why would they want to do  
5 a group session?

6           MR. ZIEGLER: Well, because they want to talk  
7 about their sports cars and, you know, they were  
8 probably trading tips on where to buy a new sports car  
9 and, you know, new house tips and that kind of thing.  
10 These are -- there's a lot of issues related to being a  
11 Sandusky payout person.

12          MS. HABIB: I know, but you're being so cynical,  
13 and it could be looked upon like really -- they really  
14 do have problems if they're willing to get up and go to  
15 a group session. Who wants to go to a group session?

16          MR. ZIEGLER: But AJ, is my recollection that  
17 that does not exist currently, and actually got  
18 disbanded, isn't that -- I thought that was the  
19 impression that she gave you?

20          MR. DILLEN: It did get disbanded. In fact, it's  
21 ironic that it gets disbanded pretty much after  
22 everybody's getting paid.

23          MR. ZIEGLER: Oh, really? On the timeline?

24          MS. HABIB: After they're getting paid. So they  
25 were in group therapy before they got paid?

1           MR. DILLEN: Yeah. After they start getting  
2 paid, she even goes -- yeah, she even said to me, she's  
3 like, "Well, we ended the group because, like, you know,  
4 people are conflicting with their schedules," and I'm  
5 looking at the papers and I'm like, "Oh, that's ironic,  
6 because they're getting paid" -- like and they stopped  
7 going to therapy, too. So, you know, like, I --

8           MR. ZIEGLER: Once you've been paid, there's no  
9 real need for it. The money is therapy in itself, so...

10          MR. DILLEN: Right.

11          MR. ZIEGLER: So, okay. Now, one of the key  
12 elements of this perfect storm of bullshit is, I  
13 believe, everybody thinks someone else is doing the  
14 vetting. You know, Shubin thinks that the prosecution  
15 has done the vetting and that the therapist has done the  
16 vetting, and the media, of course, thinks that, you  
17 know, the lawyers and the prosecutors are doing the  
18 vetting, and Penn State thinks that the lawyers have  
19 done the vetting; so therefore, if it's from the proper  
20 law firm, we're going to pay them out.

21          No one's doing the vetting themselves, and we got  
22 proof of that in one of the clips that you recorded from  
23 Cynthia Macnab, your therapist, where she talks about  
24 how she presumed that Andrew Shubin had been doing the  
25 vetting of the Sandusky accusers that came to her, and

1 here's what that sounded like.

2 (Audio clip was played:

3 MS. MACNAB: So, there may be some people who are  
4 coming forward and saying it happened to me, it happened  
5 to me, and it didn't happen. And that's where an  
6 attorney comes in and tries to, I mean, I guess vet the  
7 people and see how consistent the stories are and how  
8 real they seem. I don't know. You did this with Andy  
9 Shubin, right?

10 MR. DILLEN: Right.

11 MS. MACNAB: Well, so I don't know what happened  
12 when you went to his office. He probably asked you a  
13 bunch of questions, right?

14 MR. DILLEN: Yeah.)

15 MR. ZIEGLER: Now, that is a fascinating,  
16 although short, clip there, AJ, because she clearly is  
17 presuming, well, Shubin thinks you're a victim,  
18 therefore, you must be. And she even references, "I  
19 don't know what happened in the office, he must have  
20 asked you a bunch of questions," having no idea, of  
21 course, that he didn't ask questions, he told you what  
22 your story was.

23 MR. DILLEN: Right.

24 MR. ZIEGLER: And now it's clear that while  
25 Cynthia Macnab believes that a huge part of the vetting

1 of the accusers was done by Andrew Shubin, which we  
2 already know to be ludicrous, she also has great  
3 confidence, Liz, in her own ability to be able to vet a  
4 sex abuse claim. We're going to hear in a little bit  
5 where she claims to have a tremendous bullshit detector,  
6 and that's a direct quote.

7 And at certain points and numerous times during  
8 this process, AJ, one of the more frustrating and  
9 confusing things about listening to hours and hours and  
10 hours of audiotape is, from time to time, you express  
11 skepticism, kind of like you did with Shubin, not only  
12 about your own story but also about the stories of  
13 others.

14 And in this particular clip, you're curious as to  
15 how it is that she knows that these guys were telling  
16 the truth that came to her, and it ends with her making  
17 a remarkable statement that for someone to fool her with  
18 a fake story would require them to be "a tremendous  
19 actor," and here's what that sounded like.

20 (Audio clip was played:

21 MS. MACNAB: To know the complexity of, for  
22 instance, a kid whose family background is pretty messed  
23 up, who's never really had loving parents, sometimes  
24 never really had parents at all, who then gets attention  
25 paid to him by this big important guy, who singles him

1 out as special, and the feelings that go with that, that  
2 for the first time in my life, somebody cares about me,  
3 and nobody's (inaudible.) for me --

4 MR. DILLEN: I don't underestimate that.

5 MS. MACNAB: So then when stuff comes out about  
6 the guy and you know that -- you know that he abused  
7 you, your first impulse is to pretend it didn't happen  
8 to you, to deny that anything happened. And I think  
9 that's why some of these stories got changed, because  
10 the person who denied it inside was still a little boy,  
11 still wanting that love from that person.

12 MR. DILLEN: Right, but these are all individuals  
13 that were adults.

14 MS. MACNAB: At that point they were an adult,  
15 but emotionally, maybe not. That part of them, maybe  
16 not.

17 MR. DILLEN: I don't know. Like I said, it's  
18 just -- it's tough to nail down. It's tough in my  
19 conscience to sit there and say, "Well, I think it  
20 happened but I'm not sure," and I'm -- you know, I'm  
21 doubting myself. And then the precedent I feel like  
22 we're setting is, "Hey, look, you know, 30 years from  
23 now, 40 years from now, I could make a claim and I'm  
24 going to be believed. That's the precedent."

25 MS. MACNAB: Are you being believed right now?

1 Is your claim being believed?

2 MR. DILLEN: I'm not sure how that feels, so I  
3 don't know. Like, that's kind of, like,  
4 straightforward --

5 MS. MACNAB: Well, you have put a claim out,  
6 right?

7 MR. DILLEN: Yeah.

8 MS. MACNAB: So what's happening? You don't know  
9 what's happening?

10 MR. DILLEN: Well, it's -- yeah, I feel like --

11 MS. MACNAB: I mean, have you met with Andy, and  
12 how recently?

13 MR. DILLEN: It's been a while.

14 MS. MACNAB: A while?

15 MR. DILLEN: Like probably a little over a year.

16 MS. MACNAB: And what was the status of it then  
17 (inaudible.)

18 MR. DILLEN: The status of it then was he was  
19 awaiting for the possibility of the law to change, and  
20 it hasn't, so there was (inaudible.)

21 MS. MACNAB: The statute of limitation law?

22 MR. DILLEN: Yeah, so --

23 MS. MACNAB: So it's still not changed; is that  
24 right?

25 MR. DILLEN: Yeah, because the law hasn't -- so

1 anyways, regardless of that, like, I'm just concerned,  
2 as a person who involves myself in multiple topics, this  
3 being one, like, there will be people out there who  
4 could -- you know, you become somebody, you're an  
5 important figure, you're whatever, there's just this  
6 open -- basically this, like, open opportunity to make a  
7 claim without much validation of stuff happening.

8 MS. MACNAB: Yeah, and that's not right  
9 (inaudible.)

10 MR. DILLEN: And that's what you are alluding to,  
11 at least in some regard, by saying, like, "Well, you  
12 know, they kept it to themselves, and that may be  
13 because of the trauma" --

14 MS. MACNAB: But I'm not saying whether their  
15 claims are true or not. I, having sat with these guys,  
16 some of them, and having watched them struggle with the  
17 aftermath of it and the memories of it, I believe them,  
18 the ones I've met with. Because I don't think people  
19 can make that kind of stuff up unless they're tremendous  
20 actors.)

21 MR. ZIEGLER: "I don't think people can make that  
22 kind of stuff up unless they're tremendous actors."  
23 Now, AJ, I know you were very proud of that clip because  
24 you were ready to get nominated for an Academy Award,  
25 based upon her endorsement.

1           MR. DILLEN: I was. Sorry. But yeah, I was, I  
2 was ready for an Academy Award for that clip.

3           MR. ZIEGLER: Well, but here's the funny part:  
4 you're not that great an actor.

5           MR. DILLEN: No.

6           MR. ZIEGLER: I mean, you screwed up many times  
7 in this process, and yet, here she is saying you would  
8 have to be a tremendous actor to fool her, you know?

9           Yeah, just to be clear, because I'm always trying  
10 to be as skeptical as possible, in that clip and in  
11 others that we're going to hear as well, she does  
12 express at least a semblance of skepticism towards you,  
13 saying, "Is your story being believed?" Now, we have  
14 clips of her saying many times that she believes you, --

15          MR. DILLEN: Right.

16          MR. ZIEGLER: -- so I want to make that clear,  
17 and we'll get to that. But did you sense that she is at  
18 all skeptical of you, maybe not 100 percent but at least  
19 in the 20 percent to 30 percent, where she's saying,  
20 "Are you being believed?" How did you interpret that?

21          MR. DILLEN: I interpret that as almost like  
22 she's trying to fish to see if Shubin is believing me,  
23 because if he's believing me, she doesn't have any  
24 reason to question whether my story is being believed.  
25 I do think, yes, she was skeptical.

1           There were times that it's very clear, because  
2 she would ask me how things were going with Shubin, what  
3 the process was like. In that clip, you kind of hear  
4 that as well. But yeah, like, I feel like she was just  
5 going to believe anybody that came to her, honestly,  
6 because, like, the natural thought in today's world, and  
7 even for a while now, has been you just believe the  
8 victims and go from there, roll with it, pretty much.

9           MR. ZIEGLER: Well, she's created a whole  
10 narrative, and we heard it in that clip --

11           MR. DILLEN: Right.

12           MR. ZIEGLER: -- this whole narrative to explain  
13 almost any behavior from an accuser, because they're  
14 little boys, even though they're adults, and that they  
15 want the love from Jerry, and when they hear about it,  
16 they don't want to tell the full story, and that the  
17 little boy is still trying to hold onto that love that  
18 they had with Jerry. I mean, to me, it's all  
19 gobbledegook.

20           MS. HABIB: And even if they're adults, they're  
21 emotional. AJ, did you ever, did you ever sit there and  
22 go into details about what happened?

23           MR. ZIEGLER: Oh, yeah, we're going to get to  
24 that.

25           MS. HABIB: Oh.

1 MR. DILLEN: Yes, I did.

2 MS. HABIB: Oh, because what she's -- yeah,  
3 because what she said, I mean, did she listen to --

4 MR. ZIEGLER: No, we're -- oh, and that's  
5 actually fascinating, and we're coming up -- we're going  
6 to get to that very shortly, so you're ahead of the  
7 game, Liz.

8 MS. HABIB: All right.

9 MR. ZIEGLER: So, but let's go to another clip  
10 from Cynthia Macnab, your therapist, the go-to therapist  
11 of Andrew Shubin and his many, many clients in the Jerry  
12 Sandusky case. She has treated all of them, and she's  
13 very confident in her own "bullshit detector," and here  
14 is a clip which includes many things but including that  
15 quote.

16 (Audio clip was played:

17 MR. DILLEN: I just wanted to ask you, like I  
18 did, and you kind of answered it, so like --

19 MS. MACNAB: What was your question?

20 MR. DILLEN: Why you believe them?

21 MS. MACNAB: Why do I believe them?

22 MR. DILLEN: Yeah, why do you believe them?

23 MS. MACNAB: I think I have worked with a number  
24 of them --

25 MR. DILLEN: That doesn't mean anything. Like,

1 that's not defining. You work with many people, even  
2 outside of those individuals --

3 MS. MACNAB: I think that it's hard for people to  
4 fake the kind of emotions that I have seen in some of  
5 them. And I think, yeah, you're right, it's subjective,  
6 but I have a pretty good bullshit detector, I think, so  
7 I rely on it.

8 MR. DILLEN: Okay.

9 MS. MACNAB: I have no definitive proof. I have  
10 no videotapes, I have no audiotapes.

11 MR. DILLEN: Right.

12 MS. MACNAB: I have no DNA or anything like that.

13 MR. DILLEN: That's why I ask you, like, you have  
14 none of that --

15 MS. MACNAB: Right.

16 MR. DILLEN: -- you have only their word, or  
17 their emotions, as you described.

18 MS. MACNAB: And my sense of it.

19 MR. DILLEN: Right, and your sense --

20 MS. MACNAB: And I do trust myself in that  
21 respect, I do.)

22 MR. ZIEGLER: "I do trust myself."

23 MR. DILLEN: Right.

24 MR. ZIEGLER: "I have a pretty good bullshit  
25 detector. I rely on that." And here she again, much

1 like with Shubin, she's in front of someone telling her  
2 a fake story, that she says people can't fake this type  
3 of emotion. Give us any more context or color for that  
4 exchange, AJ.

5 MR. DILLEN: Just that, you know, two things that  
6 I wanted to comment on. The middle part there, the part  
7 where she's talking about, like, admitting there's no  
8 DNA, there's no substantial evidence other than her  
9 clients' words, that's dangerous, in the first place,  
10 that that be the only thing that convinces you that  
11 somebody's telling you the truth.

12 But yeah, just if she's -- point blank, period,  
13 I'm fake, so if your bullshit detector's that dang good,  
14 then you should have picked me off right away and you  
15 didn't. So that's pretty much what I have to say to  
16 that clip and in regards to her. I mean, that one, that  
17 one, that went home. I was disturbed by that clip.  
18 Like, I just --

19 MS. HABIB: Well, you make a good point about  
20 yourself, right? Like, you know that about yourself,  
21 and that's a great point. But when you go to a  
22 therapist, therapists you just tell stories to, they  
23 don't have DNA and all that type of thing, That's what  
24 they do, they're there to listen to your story, right?  
25 That's the situation.

1           MR. DILLEN: Right.

2           MR. ZIEGLER: No, she's not there for the  
3 purposes of legally vetting someone's story for a court  
4 of law.

5           MS. HABIB: Right.

6           MR. ZIEGLER: However -- however, she plays an  
7 incredibly important role here in why these guys were  
8 taken seriously by Shubin and by Penn State. She's --  
9 remember, Penn State is paying for this, right, AJ? I  
10 mean, Penn State is paying for this therapy, including  
11 yours?

12          MR. DILLEN: Correct, including mine.

13          MR. ZIEGLER: And so -- right. So, this is all  
14 part of the package here. I've talked many, many times  
15 about how everybody thinks somebody else is doing the  
16 vetting and --

17          MS. HABIB: Okay, so remind me who all the other  
18 people are who she sees and talks to. Because there's  
19 an interesting thing here, John, and you bring it up all  
20 the time: You say you believe some of these victims may  
21 have been sexually abused but not by Jerry Sandusky, and  
22 so there's where their emotions aren't being faked.

23          MR. ZIEGLER: I think that's a great point, Liz.  
24 And, AJ, I'm presuming you probably agree with that.  
25 And we don't know, you know, of the nine or ten Sandusky

1 accusers that she saw, how many of them may have been  
2 abused by other people, but we've heard in this podcast  
3 from A█████ F█████'s ex-wife at this point that she knows  
4 he was abused by his former stepdad who's been convicted  
5 of child molestation. And it doesn't stretch the  
6 imagination to think that, you know what, some of these  
7 guys were able to tell decent stories because they were  
8 sexually abused.

9 Now, you were not sexually abused, so you were  
10 coming out of this with nothing real on which to base  
11 your story, which is probably partially why your story  
12 was so ridiculous.

13 MS. HABIB: Right.

14 MR. ZIEGLER: But can you see Liz's point there?

15 MR. DILLEN: Yeah, I can see it. I mean, this  
16 totally did not slip my mind, that some of these  
17 individuals could have been abused by somebody else. I  
18 just know they weren't abused by Jerry. And you're  
19 right, if they were really abused by somebody else, they  
20 could easily project that because they'd know those  
21 feelings, they'd know those thoughts and, you know, so  
22 -- and that's that (inaudible cross-talk.) Just to be  
23 clear --

24 MS. HABIB: But you can't? Are you saying you  
25 can't? You don't have any past history of this, that

1 you can't project feelings like that?

2 MR. DILLEN: No, no, I couldn't project feelings  
3 like that, and I wasn't in -- to be fair, I wasn't in  
4 those sessions either to know exactly what the emotions  
5 were. But I'll take Macnab at her word that, you know,  
6 they demonstrated these emotions, and strong emotions,  
7 and somebody couldn't fake like that. However, what I  
8 find interesting about her is she's believing me, and  
9 she sees me multiple times afterwards. So, yeah, I  
10 don't (inaudible.)

11 MR. ZIEGLER: And as far as her BS detector, not  
12 only is she believing you, and seeing you, you believe,  
13 around 100 sessions over many, many years, and while she  
14 does express at times a little bit of skepticism, not  
15 nearly as much as she should have, and we're going to  
16 get to hear some of that very shortly. In that clip,  
17 you're doing something which must have seemed very, very  
18 odd for a Sandusky accuser: you're saying you don't  
19 believe these guys.

20 Now, if she's got such a great BS detector, why  
21 did that not set off alarm bells?

22 MR. DILLEN: True. That's a very great point you  
23 make, John, why didn't it set off alarm bells? I mean,  
24 I'm -- you know, on multiple occasions, whether it's  
25 with Shubin or Macnab, you know, it probably should have

1 set off alarm bells, which is probably one of the most  
2 shocking things in the entire thing, just by questioning  
3 the victims' stories or their credibility in regards to  
4 Jerry Sandusky and the accusations made against him.

5 MR. ZIEGLER: Well, I guarantee you, I guarantee  
6 you you're the only "Sandusky accuser" that they saw  
7 that did that. Because it makes absolutely no sense, if  
8 you believe that Jerry abused you, right -- let's just  
9 try to use basic logic here -- if you believe that Jerry  
10 abused you, that's what your story is, and you weren't  
11 even part of the trial, why would you disbelieve those  
12 that were testifying publicly under oath that said the  
13 same thing?

14 MS. HABIB: Right, right.

15 MR. ZIEGLER: That makes no fucking sense, right?  
16 I mean, so -- now granted, you know, she might have just  
17 thought you were nuts, and she sees a lot of nutty  
18 people because he's a therapist, but that's an inherent  
19 contradiction.

20 MS. HABIB: Not all people that go to therapists  
21 are that nutty.

22 MR. ZIEGLER: I know AJ, he's nuts.

23 MS. HABIB: Oh, okay. I just want to defend the  
24 people who see therapists for one second, because I  
25 don't want us to be one of, you know --

1           MR. ZIEGLER: I get it.

2           MS. HABIB: -- painted as a picture as though we  
3 don't believe in that, you know?

4           MR. ZIEGLER: I know. I understand.

5           MR. DILLEN: Right.

6           MS. HABIB: People can be fooled, you know?

7           MR. ZIEGLER: Okay, now let's go to Macnab's  
8 overall theory of traumatic experiences and memories and  
9 why these stories change and whether or not she believes  
10 in repressed memories and this issue of post-traumatic  
11 stress disorder, which is really paramount to your  
12 diagnosis and the diagnosis of all the other Sandusky  
13 accusers that go to Cynthia Macnab.

14           And here is her talking about her philosophy on  
15 this particular issue, when it comes to people  
16 suppressing past memories of trauma.

17           (Audio clip was played:

18           MS. MACNAB: We're talking about why you  
19 repressed or hid it or whatever (inaudible.)

20           MR. DILLEN: Right.

21           MS. MACNAB: I think that people do repress  
22 memories, and I think that people don't really -- I  
23 mean, I think there's a whole continuum of what that  
24 means. Sometimes it means they totally forget and it's  
25 not in their consciousness at all until something

1 happens some time in their life, like they have a child  
2 and the child reaches the age that they were when they  
3 were abused, and then suddenly this stuff comes flooding  
4 back, and it's like, "What the hell?"

5 So that's at this end of the continuum. At this  
6 end of the continuum, the other side is knowing but not  
7 wanting to think about it and sort of putting it out of  
8 your mind, the way you deal with anything that's  
9 unpleasant, but knowing it's there but just not focusing  
10 on it. And then there's everything in between.

11 So this, over here on this end, where they didn't  
12 remember, that's repressed memory, and this isn't, but I  
13 prefer to use the term "dissociation." Dissociation  
14 just means disconnect, and there's different ways that  
15 we can disconnect, and we all do it to a greater or  
16 lesser degree, you know? I can be driving down the  
17 highway and listening to the radio or listening to a  
18 song or something and realize that I don't know -- I've  
19 not been so aware of what I'm seeing on the way the last  
20 miles. That's highway hypnosis.

21 MR. DILLEN: Right, but you think individuals can  
22 disconnect for years or you're talking about --

23 MS. MACNAB: Yes.

24 MR. DILLEN: That's a good example, of a highway,  
25 but, you know, I'm talking about -- that's a short term

1 -- right.

2 MS. MACNAB: Yes, that's a mini, that's a mini,  
3 short-term example. But yes, people can disconnect for  
4 years, and they can disconnect from -- what's the  
5 acronym? I'm not going to be able to remember. They  
6 can disconnect from the knowledge of what happened, they  
7 can disconnect from the feelings of what happened, they  
8 can disconnect from the body sensations of what happened  
9 and -- there's on more, I can't remember it.

10 (Inaudible)

11 So -- or all of those. And, you know, you talk  
12 about -- a dissociation happens when you're in a  
13 situation that is beyond what's normal, what people  
14 normally encounter, and combat is a good example, and I  
15 think that's where we first started learning about PTSD,  
16 was with combat veterans. You know that probably.

17 MR. DILLEN: Yeah.

18 MS. MACNAB: So I've been watching the Vietnam --  
19 the documentary on the Vietnam War, and there's one guy  
20 who -- oh, I can't remember what happened. He was --  
21 but this is after he came home from the war, and  
22 something startled him. He was driving in his car,  
23 somebody honked at him or something, and the next thing  
24 he knew, he was out of the car and he had the driver out  
25 of the car and pinned up against the car. He was acting

1 as if he was in combat, but he had no memory of getting  
2 out. That's a dissociative response.

3 MR. DILLEN: Sure, but apply that to abuse.

4 MS. MACNAB: Okay. A person can be abused,  
5 forget about it, and then something happens that -- some  
6 little thing, like the way the light comes in through a  
7 window or something can trigger the memory years and  
8 years later, and suddenly they have a memory of being  
9 abused, and it's very confusing and can kind of startles  
10 you (inaudible) like, what the hell is happening?)

11 MR. ZIEGLER: What the hell is happening? Yeah,  
12 I want to ask that question, too, what the hell is  
13 happening in that clip? Because there's a lot of stuff  
14 there that's very problematic. Let's kind of go through  
15 some of it.

16 She says right off the bat, "I believe people  
17 repress memories." Now, that's a term that, in the  
18 legal sphere, has been completely discredited and  
19 toxified.

20 Dr. Elizabeth Loftus, who has actually testified  
21 on Jerry Sandusky's behalf, one of the world's foremost  
22 experts on memory, has single-handedly discredited the  
23 idea of repressed memory and repressed memory therapy.

24 And this is a large part of Mark Pendergrast's  
25 book, where he argues that Jerry Sandusky is very likely

1 innocent. Now, it should be noted, Liz and AJ, I know  
2 you know this, but victim number seven, who was  
3 interviewed by Mark Pendergrast and who admitted having  
4 undergone repressed memory therapy, was an Andrew Shubin  
5 client who went to Cynthia Macnab.

6 So this is not just theoretical. This is a key  
7 trial victim who went to Cynthia Macnab and who  
8 believes, and Mark Pendergrast believes, that he really  
9 thinks he was abused by Jerry and that he just repressed  
10 the memory and cannot remember any of the details and  
11 that's why he never told anybody.

12 And so clearly, AJ, and I'm assuming you'll agree  
13 with this, that D█████ S█████ going to Cynthia Macnab,  
14 it's not a coincidence that he ends up with this concept  
15 that he had repressed the memory of abuse by Jerry  
16 Sandusky.

17 MR. DILLEN: I'm not surprised with that. Yeah,  
18 D█████ I could buy would be totally convinced. Cynthia  
19 is very good at that, and I don't think D█████ what have  
20 the knowledge to know that repressed memory has been  
21 debunked and why we have an incentive to debunk it  
22 anyways.

23 MS. HABIB: Wait, you know him?

24 MR. DILLEN: He wouldn't, he wouldn't have the  
25 knowledge -- I'm just basically saying D█████ wouldn't

1 have the knowledge of that being a debunked method of  
2 therapy and thought.

3 MR. ZIEGLER: Do you know D\_\_\_\_\_?

4 MR. DILLEN: I actually do know D\_\_\_\_\_, but it's  
5 been years since I've seen him, and it was before the  
6 trial.

7 MR. ZIEGLER: Okay. But I think it's incredibly  
8 important that when she's openly admitting that she  
9 believes in repressed memories, which she doesn't want  
10 to call repressed memory because --

11 MS. HABIB: But that's sort of the new term,  
12 isn't it, the one she uses, the dissociation?

13 MR. ZIEGLER: Right, dissociation and disconnect,  
14 and then that leads to PTSD, post-traumatic stress  
15 disorder. So she knows it's a politically incorrect  
16 term. They know within the therapy world that it has  
17 been discredited, so now they've shifted. We're not  
18 allowed to use "repressed memory" anymore, we're going  
19 to call it dissociation, disconnect, and post-traumatic  
20 stress disorder.

21 Now, this is where things get really interesting,  
22 Liz, because, AJ, you were actually diagnosed by a  
23 psychotherapist, not Cindy Macnab, someone she sent you  
24 to, you were diagnosed with what?

25 MR. DILLEN: PTSD.

1           MR. ZIEGLER: Because of your abuse by Jerry  
2 Sandusky, correct?

3           MR. DILLEN: Correct.

4           MR. ZIEGLER: So you went -- you were sent by  
5 Macnab to a psychotherapist who officially diagnosed  
6 you, and we have the documentation of this, diagnosed  
7 you with PTSD because of your sexual abuse you suffered  
8 at the hands of Jerry Sandusky?

9           MR. DILLEN: Correct.

10          MR. ZIEGLER: Liz, as you know, as the podcast  
11 was being dropped, I was approached by several different  
12 people, who had pretty dramatic reactions to what was in  
13 the podcast. One of those was Dr. Elizabeth Loftus.  
14 She is a distinguished professor at the University of  
15 California Irvine, one of the world's foremost memory  
16 experts, someone I've interviewed on this case  
17 previously. She's actually testified in this case on  
18 behalf of Jerry Sandusky in one of his appeal hearings.

19          She originally represented Gary Schultz and Tim  
20 Curley in this case, and she is very critical of the  
21 therapists, specifically with regard to the use of  
22 repressed memory therapy and the concept of  
23 disassociation. And she was really interested in AJ  
24 Dillen's interview.

25          Her first words to me were -- her first word to

1 me was, "Wow," and here is a snippet of my interview  
2 that I did with Dr. Elizabeth Loftus, as the podcast was  
3 being dropped, about her reaction to hearing our AJ  
4 Dillen episode.

5 (Audio clip was played:

6 DR. LOFTUS: All I can say is "Wow." You know,  
7 the idea that he goes into the lawyer with one story,  
8 and a short time later, the lawyer is reading back to  
9 him a different story that places the abuse in a  
10 different location conveniently on the campus of Penn  
11 State, which makes Penn State the deep pocket in any  
12 kind of civil litigation, and the therapist, who AJ goes  
13 to see 100 times or so, who basically, you know, tells  
14 him she believes in repressed memory, tells him she  
15 doesn't think people can make this up unless they're  
16 really, really good actors, tells him that she has a  
17 really, really good bullshit detector, well, it wasn't  
18 so good that she could spot AJ Dillen as a  
19 pseudo-patient. It's just incredible to listen to.)

20 MR. ZIEGLER: All right, now, to be clear, you do  
21 not have PTSD, right?

22 MR. DILLEN: No.

23 MR. ZIEGLER: However, I will say that I have --

24 MS. HABIB: I was just about to say it, but John  
25 has PTSD. John has PTSD.

1           MR. ZIEGLER: I have PTSD. I have PTSD from my  
2 experience in this whole case --

3           MS. HABIB: Yes, yes.

4           MR. ZIEGLER: -- but specifically in my  
5 relationship with you, AJ, I have absolutely PTSD.

6           MR. DILLEN: I'm sorry.

7           MR. ZIEGLER: You would agree with that, right?

8           MR. DILLEN: I would agree with that. I'm sorry.

9           MS. HABIB: Yeah, but in all honesty, John, in  
10 all honesty, John, you do have effects. You feel the  
11 effects of eight years of investigating this case.

12          MR. ZIEGLER: No, no, I'm not lying.

13          MS. HABIB: And you truly -- this is true, this  
14 is not a joke, this is absolutely true with you. I'm  
15 around you. I know what it does to you.

16          MR. ZIEGLER: I have PTSD because of this case.  
17 You know, you don't have it -- and, AJ, you might have  
18 it because of the case, too, but not because of Jerry  
19 Sandusky abusing you.

20          MR. DILLEN: Right.

21          MR. ZIEGLER: But let's also be clear. Let's  
22 just make sure we complete the circle here.

23          MS. HABIB: Yeah.

24          MR. ZIEGLER: So I've seen the settlement  
25 documents, Liz. Every single one of Andrew Shubin's

1 clients, with the possible exception of one because  
2 there was some ambiguity, but every single one of Andrew  
3 Shubin's clients were diagnosed with PTSD, and it was  
4 documented in the settlement documents. This was their  
5 way of getting around repressed memory therapy. They  
6 simply changed the name from repressed memory to PTSD.

7 MS. HABIB: She brought it right up right there.  
8 She brought it right up.

9 MR. ZIEGLER: Right, she's the smoking gun.

10 MR. DILLEN: Yep.

11 MR. ZIEGLER: Smoking gun. "I prefer to talk  
12 about it as PTSD," and then she refers to it, the  
13 analogy -- and, AJ, you did a good job of saying, "Well,  
14 what about with abuse?" Because she uses the example of  
15 combat, okay?

16 MS. HABIB: Right.

17 MR. DILLEN: Right.

18 MR. ZIEGLER: Now, but has there ever been an  
19 example of a combat veteran forgetting that they got  
20 injured in combat?

21 MS. HABIB: Yeah, no.

22 MR. DILLEN: Right.

23 MR. ZIEGLER: I mean, has there ever been a case  
24 of that?

25 MS. HABIB: No.

1           MR. ZIEGLER: Now, maybe if you got a concussion,  
2 right?

3           MS. HABIB: Or you got -- something happened,  
4 right.

5           MR. ZIEGLER: Right.

6           MS. HABIB: But no, they know where they've been.  
7 They have PTSD because they know what they've seen, they  
8 know what they experienced, they know what (inaudible.)

9           MR. ZIEGLER: It's like saying I have PTSD but  
10 I've completely forgotten I was in Iraq. I mean, what  
11 -- or forget about even being in Iraq. You know, why do  
12 you have -- what happened? What experience did you  
13 suffer that caused you to have PTSD? I have no doubt  
14 that PTSD is a real thing, but it is --

15          MS. HABIB: Absolutely true, in many cases.

16          MR. DILLEN: It is a real thing.

17          MS. HABIB: Yeah, and it's not just because of  
18 combat. There's all kinds of different things, yes.

19          MR. DILLEN: Yeah.

20          MR. ZIEGLER: Right, but the combat analogy, the  
21 combat analogy is absurd, because there's -- I am  
22 unaware of a situation, nor would it be logical for  
23 someone to forget, that they suffered damage in combat.  
24 I mean, that just -- I've never heard of that. It  
25 doesn't make any sense --

1 MS. HABIB: Unless there was a major injury, like  
2 you said.

3 MR. ZIEGLER: Right, unless there was a  
4 concussion. I mean, and you know, other than Randy Tice  
5 taking out Jerry's teeth in 1971, there's no -- there's  
6 no evidence of any physical fights between any of these  
7 accusers and Jerry Sandusky that would cause that.

8 So I found that clip to be really, really  
9 significant. And again, to be clear, because you were  
10 diagnosed with PTSD, it further substantiates that her  
11 BS detector is not working, the system's BS detector is  
12 not working, and once she finds out -- because I have  
13 the tape of you telling her that you've been diagnosed  
14 as such by her psychotherapist -- that has to have a  
15 huge impact in your credibility in her eyes, right, AJ?

16 MR. DILLEN: Right.

17 MR. ZIEGLER: Yeah, I mean, because now you're  
18 one of the club. You're part of the PTSD club. All  
19 right --

20 MR. DILLEN: Right, yeah, the PTSD club  
21 (inaudible.)

22 MR. ZIEGLER: Right. Okay.

23 MS. HABIB: These people are either phoning it in  
24 with their jobs or they're part of a conspir- -- you  
25 know, they're doing it on purpose to get the money.

1           MR. ZIEGLER: Well, I don't --

2           MS. HABIB: I don't want to use "conspiracy"  
3 because I don't think they're conspiring at this point.  
4 I don't think that's conspiracy. I just think there's  
5 money in it, there's a system that they're doing, and  
6 they're running people through a system instead of  
7 stopping to listen and do their job. I think that's  
8 more it.

9           MR. ZIEGLER: I think -- right, this is a  
10 conspiracy of self-interest.

11          MS. HABIB: Yeah.

12          MR. ZIEGLER: Everyone is believing what's good  
13 for them. I mean --

14          MS. HABIB: For laziness.

15          MR. ZIEGLER: And that's a great setup for where  
16 we're going next, because here's Cynthia Macnab, who I,  
17 having listened to many hours over these excruciating  
18 tapes, and they are excruciating, listening to you, AJ,  
19 is excruciating. I mean, I could not possibly have been  
20 paid enough money to do this, and I did.

21          MS. HABIB: See? PTSD.

22          MR. ZIEGLER: And that's why I have PTSD,  
23 partially due to my involvement with you in this  
24 situation. But she's not dumb. She is not a dumb  
25 person. Now, she believes a lot of crazy things, and --

1           MR. DILLEN: Right.

2           MR. ZIEGLER: But she is not dumb. And I don't  
3 think that she has a non-existent BS detector. I just  
4 think she put it on silent during --

5           MS. HABIB: Yes, she's running it through the  
6 system, John, uh-huh (affirmative.)

7           MR. ZIEGLER: Right, because she is so invested  
8 in her beliefs about the nature of sexual abuse, the  
9 nature of memories, repressed memory, PTSD, what have  
10 you, and where we find out about that firsthand is when  
11 you tell her your specific story of abuse.

12          Now, this gets a little complicated, and I want  
13 to make very clear that we're about to play five  
14 different clips from an extended conversation. This was  
15 all from one session, one of your however many sessions  
16 you had, close to 100, that was, you know, like a  
17 50-minute session, and we're going to play five clips.  
18 They're not anywhere near 50 minutes, so don't worry  
19 about that.

20          But this is all from one session, and this is  
21 going through point by point, you telling her your  
22 story. And the story we're going to hear you tell is  
23 your original story that you told Andrew Shubin in your  
24 first meeting with him, the crazy story about being  
25 abused by Jerry Sandusky in a park behind Joe Paterno's

1 house. Correct, AJ?

2 MR. DILLEN: Correct.

3 MR. ZIEGLER: Now, at later points in the  
4 session, you do reference Shubin's version of the story,  
5 but you don't give any details of that because you don't  
6 have any details because it's not your made-up story. I  
7 guess you could only -- I guess you were only  
8 comfortable talking about the details of your made-up  
9 story, not Shubin's made-up story, is that accurate?

10 MR. DILLEN: Yeah, that's accurate.

11 MR. ZIEGLER: Okay, so for the purposes of  
12 simplicity, we're going to take you through the telling  
13 of your story, the one you told Shubin before he totally  
14 changed it and basically disre- -- he basically  
15 disregarded this version of your story because he didn't  
16 find any value in it. I don't know if he didn't believe  
17 it because it's so ridiculous, but it was no value to  
18 him because it's not on Penn State's campus and you  
19 didn't tell anybody at Penn State about it, so it's of  
20 no value to him from a monetary perspective.

21 So let's go through the clips, and you're going  
22 to hear how believable AJ is and, at times, I think  
23 Cindy Macnab is close to calling bullshit, but she could  
24 never pull the trigger.

25 So, this is just -- this just gives you a kind of

1 a starting point, where AJ is describing to her the  
2 difficulty, the challenge of remembering his abuse. So  
3 this is kind of just to set the tone for the  
4 conversation.

5 (Audio clip was played:

6 MR. DILLEN: I wanted to get a little serious  
7 today.

8 MS. MACNAB: Okay.

9 MR. DILLEN: So I wanted to talk about, like, why  
10 it's a challenge what I recall and why it's a challenge  
11 for me to remember about my abuse.

12 MS. MACNAB: Why it's a challenge to remember?

13 MR. DILLEN: Yeah. Some of it's, like, foggy,  
14 has been foggy for me at times or whatever. But  
15 basically what I recall is that it was 19 -- 1996, I  
16 believe. It was the year I was at The Second Mile,  
17 yeah.

18 MS. MACNAB: And how old were you in 1996?

19 MR. DILLEN: In '96, I would have been 13.

20 MS. MACNAB: Okay.

21 MR. DILLEN: Yeah, so it's like '96, 13. Yeah,  
22 and so I was at this camp, I was having a blast  
23 somewhat, at the same time I was having a lot of, like,  
24 challenges with staff and with my peers because that's  
25 just who I've been most of my life. I have a hard time

1 developing friendships and relationships.

2 MS. MACNAB: So I'm going to -- can I ask you  
3 questions as you talk about this?

4 MR. DILLEN: Yeah.

5 MS. MACNAB: What kind of challenges? Will you  
6 tell me what was happening?

7 MR. DILLEN: Just getting along --)

8 MR. ZIEGLER: All right, now, AJ, so I'm assuming  
9 that that part of the story was real, right?

10 MR. DILLEN: Yeah.

11 MR. ZIEGLER: Okay. So you were creating a  
12 scenario for her of why you were at The Second Mile,  
13 what the circumstances were when Jerry decides to  
14 suddenly abuse you, and that was all based on a real set  
15 of circumstances, right?

16 MR. DILLEN: Correct.

17 MR. ZIEGLER: Okay. And then from then, you go  
18 on to start to tell the story of meeting Jerry behind  
19 Joe Paterno's house, in this park in State College,  
20 which leads to your sexual abuse, and we pick this up a  
21 couple of minutes later in the conversation where she's  
22 asking you about how it is that you ended up meeting  
23 Jerry Sandusky and specifically whether or not your  
24 parents knew that you were meeting Jerry Sandusky, which  
25 I thought was an indication that she had at least a

1 little bit of skepticism about the nature of your story,  
2 because she seems a bit confused by that.

3 But this is about a four-and-a-half-minute clip  
4 that begins with her expressing, you know, at least a  
5 curiosity about how this meeting took place.

6 (Audio clip was played:

7 MS. MACNAB: Did your parents know you were  
8 meeting him?

9 MR. DILLEN: Think on a few occasions they did,  
10 but no, for the most part, they didn't.

11 MS. MACNAB: So you didn't tell them that you  
12 were meeting Jerry Sandusky at the top of the hill?

13 MR. DILLEN: I don't think so. I probably would  
14 have said I'm going to meet a friend, as I would do  
15 normally.

16 MS. MACNAB: Oh. So, you said he came to you.  
17 So how did he get -- how did he contact you?

18 MR. DILLEN: He had campers numbers, like he had  
19 (inaudible.)

20 MS. MACNAB: Did you have him on a cell phone?

21 MR. DILLEN: No, he called the house phone.

22 MS. MACNAB: He called the house, and so somebody  
23 at the house --

24 MR. DILLEN: I -- I happened to answer, yeah.

25 MS. MACNAB: Oh, okay. Okay, so that's how you

1 got where to meet him and stuff?

2 MR. DILLEN: Yeah. Because, I mean, I had, like,  
3 issues with going back, so I think in some ways, he  
4 called, he must have called, because somebody must have  
5 told him that I was upset about the camp.

6 MS. MACNAB: And you wanted to go back or didn't  
7 want to go back?

8 MR. DILLEN: I wanted to go back.

9 MS. MACNAB: Okay.

10 MR. DILLEN: I enjoyed the time there, at the --  
11 the stuff.

12 MS. MACNAB: Okay.

13 MR. DILLEN: I mean, I got into arguments and  
14 stuff, but overall, the experience was pretty good.

15 MS. MACNAB: Okay. So you agreed to meet him  
16 because he was going to talk with you about going back?

17 MR. DILLEN: Yeah, and about what my issues with  
18 the camp were.

19 MS. MACNAB: I see.

20 MR. DILLEN: I had a lot of issues with  
21 counselors there, so -- so anyways, we get in the car,  
22 and he's just basically talking to me and asking me  
23 about why I was upset with the camp. And he pulled --  
24 we get basically to where, I don't know if you know, our  
25 Sunset Park is?

1 MS. MACNAB: I do. I can't pull it up -- it's  
2 like, is it on the other side of (inaudible) street,  
3 towards, like, this college?

4 MR. DILLEN: Yeah, opposite.

5 MS. MACNAB: Yeah, yeah, yeah. Yeah, I do know  
6 where Sunset Park is.

7 MR. DILLEN: So we get there, we continue  
8 talking, and he puts his head on my lap, and I think --  
9 I'm like, "Eh, whatever, coaches," I mean, people have  
10 done this before.

11 MS. MACNAB: The touch, yeah.

12 MR. DILLEN: Exactly. So, I mean, I've even had  
13 friends do it, like, "good job" or, you know, stuff, or  
14 -- so I don't really think nothing of it. When I start  
15 to think something of it is when he starts sliding his  
16 hand upwards, and then I'm, like, just starting to freak  
17 out because it just --

18 MS. MACNAB: Because that's a little weird, yeah.

19 MR. DILLEN: Yeah. It was, like, fine to be on  
20 my leg -- I don't even know if it was fine to be on my  
21 leg in the sense of I didn't want really, like, even the  
22 previous people doing it, but it wasn't --

23 MS. MACNAB: It wasn't that inappropriate.

24 MR. DILLEN: Right.

25 MS. MACNAB: So you're sitting in the car,

1 talking at this point, and (inaudible.)

2 MR. DILLEN: Uh-huh (affirmative.) And so then  
3 he's, like, continuing to talk to me and --

4 MS. MACNAB: About the camp?

5 MR. DILLEN: About the camp. And telling me, you  
6 know, it'll be all right, like, you know, if you want to  
7 come back, you can come back or whatever. And I'm like,  
8 "Yeah, I had fun but, like, I really didn't like how the  
9 counselors treated me. They kind of singled me out."

10 He's like, "Oh, it'll be all right. Remember to  
11 stay focused on your goals, you know, and pretty much be  
12 -- prove them wrong or just show them that, you know,  
13 that's not how they are."

14 So things continue, it kind of just goes from  
15 there, and he just kind of, like, continues to fondle my  
16 leg, so to speak, and I'm uncomfortable as shit. I'm  
17 like, "Why are you doing this?" Like, this is weird.  
18 Like, I've never had anybody do this, this is just  
19 instinct telling me it's weird.

20 MS. MACNAB: Sure.

21 MR. DILLEN: And so then he's like, "Why don't  
22 you come out of the car and we'll go talk?" I'm like,  
23 "Okay." I'm weirded out, so why should I get out of the  
24 car and talk? But he's an adult, so I don't know what  
25 to -- what I'm -- you know?

1 MS. MACNAB: Right. And plus, if you get out of  
2 the car, maybe he gets his hand off your leg, you know?

3 MR. DILLEN: Right.

4 MS. MACNAB: So, what time of the year was this?

5 MR. DILLEN: I think it was summer or -- was it?  
6 Yeah, summer through fall.

7 MS. MACNAB: So it's warm enough that you --  
8 yeah, okay. All right. Okay.

9 MR. DILLEN: Yeah. And so then we go down, there  
10 was this bike path -- or there was this -- I don't think  
11 it was a bike path necessarily. There was some sort of  
12 path that exited through Sunset. Like if you go  
13 straight out the parking lot and down, there was this  
14 bike --

15 MS. MACNAB: Uh-huh(affirmative,) yep.

16 MR. DILLEN: And that's where he insisted that I  
17 give him oral sex.

18 MS. MACNAB: Okay. He insisted?

19 MR. DILLEN: Well, he -- yeah, pretty much. I  
20 mean, that's hard for me to say, but yeah, pretty much.

21 MS. MACNAB: Pretty much, okay.

22 MR. DILLEN: Like, he did.

23 MS. MACNAB: Okay. So what did he say, do you  
24 remember?

25 MR. DILLEN: He was just kind of blunt about it,

1 which is even weird.

2 MS. MACNAB: Yeah.

3 MR. DILLEN: And then I'm like -- I didn't -- I,  
4 of course, didn't feel comfortable, and I didn't even  
5 really know what that was at the time. And so that  
6 occurred and, you know, then he, after that, he would  
7 come get me more.)

8 MR. ZIEGLER: All right. Now, AJ, let's go  
9 through this clip. At the beginning, do you feel as if  
10 she's expressing skepticism about your story because she  
11 doesn't understand how it is that you met Jerry without  
12 your parents knowing?

13 MR. DILLEN: At the time, probably not, but I see  
14 it now, yeah.

15 MR. ZIEGLER: It sounds to me like she's  
16 expressing skepticism. She's like, "So, how did Jerry  
17 meet you? You answered the phone?" I mean, I'm hearing  
18 skepticism. You're not hearing that?

19 MR. DILLEN: Not really. But, like, I could see  
20 where you'd hear skepticism in that, yeah.

21 MR. ZIEGLER: Well, what doesn't appear to create  
22 any skepticism is where you say that Jerry Sandusky,  
23 although at other points she does express, you know,  
24 cynicism about the location and whether it's on a bike  
25 path and how open a space that is and whether or not

1 people can see you, but to me, the biggest hole in your  
2 story is Jerry Sandusky says, "Give me oral sex." You  
3 tell her you don't know what oral sex is.

4 So how did you give Jerry Sandusky oral sex if  
5 you didn't know what it was?

6 MR. DILLEN: Yeah, yeah, good point.

7 MR. ZIEGLER: Like, what --

8 MS. HABIB: How did you make up that story?

9 MR. DILLEN: How? I just did. It was -- it just  
10 came to my head, like, randomly. That's why it's such a  
11 bad job. In fact, that I was believed is even more  
12 shocking.

13 MR. ZIEGLER: Well, I think part of the reason  
14 why you're believed -- correct me if I'm wrong -- is I  
15 hear nervousness in your voice, but your nervousness is  
16 because you know you're telling a bullshit story and  
17 you're afraid she might figure it out, and she's  
18 probably interpreting the nervousness as the trauma  
19 coming out in your voice of remembering a real event.

20 MR. DILLEN: Right. Yeah, I mean, I was totally  
21 nervous in telling it. Like, I mean, it's hard to say  
22 that. It's hard to say that I was -- I mean, and she  
23 had, over the years, over the time period, she had kept  
24 pressuring me and, like, you talk about so many other  
25 things but you never talk about, like, your actual

1 abuse. So that day I went with it. So, you know, and  
2 it felt like --

3 MR. ZIEGLER: Now, how long into your therapy  
4 sessions, how many years or whatever, do you estimate  
5 this was before you finally told her the full version of  
6 your story, your fake story of abuse by Jerry Sandusky?

7 MR. DILLEN: Between two, two-and-a-half years.

8 MS. HABIB: What? Wow.

9 MR. ZIEGLER: Wow. So she never got you to talk  
10 about it and never insisted that you talk about it  
11 before then?

12 MR. DILLEN: She did insist on a few other  
13 occasions prior to that time, and I just couldn't.  
14 Like, it's hard to -- it's really, really difficult to  
15 work your mind up, I guess, as a straight male and say,  
16 "Hey, this person," fake or not, you know, "forced me to  
17 give him oral sex." Like, it's not easy to do that at  
18 all. (Inaudible.) But it is.

19 MS. HABIB: Well, you guys in central  
20 Pennsylvania have got a lot of hang-ups with that. I  
21 mean, what's such a big deal? I don't understand that.  
22 Like, what's so hard to admit that? And you were making  
23 a fake story. That just doesn't seem --

24 MR. ZIEGLER: It is very traumatic to make up a  
25 fake story of abuse.

1 MS. HABIB: I mean, it's -- but I don't -- what  
2 the heck, AJ, did you spend two years, almost three  
3 years talking to her about in these sessions? I mean,  
4 basically, you're ripping off the university, getting  
5 sessions. What are you talking to her about?

6 MR. DILLEN: Oh, we talked about a range of  
7 things, from whether it's, you know, real things I  
8 experienced in life to --

9 MS. HABIB: You were using her as your therapist?

10 MR. DILLEN: Yeah, so just building -- to me, I  
11 was trying to build, I know it seems forever, but I was  
12 trying to build rapport. I was also trying to keep, you  
13 know, the sessions going, to get the information we  
14 needed. So, like, not all the information came at the  
15 same time. I wanted to really get data and make sure  
16 that I was making the right decision in concerns to  
17 these victims of -- now victims because Jerry is  
18 convicted. And, so, that takes time. It wasn't --

19 MS. HABIB: They're still alleged victims.

20 MR. DILLEN: I wasn't ripping off anybody. It's  
21 just the way it progressed that way.

22 MR. ZIEGLER: And by the way, just to be clear,  
23 you wanted to make sure that you were right.

24 MR. DILLEN: Right.

25 MR. ZIEGLER: I mean, so you were open to the

1 idea that maybe these guys were actually victims, at  
2 least in theory, right?

3 MR. DILLEN: Absolutely. And if you look at --  
4 if you really look at how, you know, some of the things  
5 that, John, you've expressed, well, you know, you did  
6 the James Bond/Barney Fife, some of that is I want to be  
7 sure, and actually, most of it is, I want to be sure I'm  
8 not wrong here.

9 MR. ZIEGLER: Right.

10 MR. DILLEN: Like, I don't want to discredit  
11 anybody who really experienced this type of abuse, I  
12 just want to find out how that determination was made.

13 MR. ZIEGLER: Sure.

14 MR. DILLEN: And based on spending dang near  
15 three years -- or no, it was probably straight up three  
16 years, you know, I don't see how any of these victims  
17 were really abused in the sense that it concerns Jerry  
18 Sandusky.

19 MR. ZIEGLER: All right, so let's go back to your  
20 conversation with Cynthia Macnab. We move forward only  
21 a couple of minutes, and she compliments you on doing a  
22 good job of making it a fuller story than she had ever  
23 heard you give previously, and then she does probe you  
24 for some more details about what happened in your  
25 relationship with Jerry, and here's what that sounded

1 like.

2 (Audio clip was played:

3 MS. MACNAB: But you did a good job of making it  
4 a fuller story. We were talking about that last time,  
5 how it's not just a statement, a headline, it's -- I  
6 have more of a sense of you being in it when you tell it  
7 like this.

8 MR. DILLEN: Yeah.

9 MS. MACNAB: And that's important for your work.  
10 So, the first time was at -- what time of day was it?

11 MR. DILLEN: I would say it was probably mid-  
12 afternoon or --

13 MS. MACNAB: Uh-huh (affirmative,) during the  
14 evening?

15 MR. DILLEN: Yeah, during the day.

16 MS. MACNAB: And this happened in public. Was  
17 there -- I mean, I wonder why wasn't he afraid of  
18 getting caught? It was kind of in a secluded area or  
19 something?

20 MR. DILLEN: I mean, that parking lot is normally  
21 not even, like, frequented.

22 MS. MACNAB: Right. But people would -- but you  
23 were on the bike path or something (inaudible.)

24 MR. DILLEN: Yeah.

25 MS. MACNAB: So people run on a bike path

1 (inaudible.)

2 MR. DILLEN: Right. There was really nobody on  
3 that.

4 MS. MACNAB: Nobody was around?

5 MR. DILLEN: And, like, I mean, we weren't  
6 literally on the bike path, it was -- we were -- like,  
7 on each side of the bike path, there's woods. So, I  
8 mean, it's possible somebody could have come by but they  
9 wouldn't have necessarily seen.

10 MS. MACNAB: Yeah, okay.

11 MR. DILLEN: I mean, it wasn't like boom, right  
12 here in the (inaudible.)

13 MS. MACNAB: Right. So you said he told you to  
14 do this, so -- and you didn't really know what it was,  
15 or you didn't (inaudible) weird to you?

16 MR. DILLEN: Was he rude?

17 MS. MACNAB: No, weird (inaudible.)

18 MR. DILLEN: Oh, yeah, weird. It was weird.

19 MS. MACNAB: Yeah.

20 MR. DILLEN: It was -- just weird. I don't even  
21 -- like, I can at least understand that, it was weird to  
22 me, and I didn't know what it was, and -- you know, he  
23 basically just showed me and then forced it.

24 MS. MACNAB: Okay. Put it in your mouth you're  
25 saying?

1 MR. DILLEN: Like, he just forced me to do that.

2 MS. MACNAB: So he, like, grabbed your head?

3 MR. DILLEN: Yeah.

4 MS. MACNAB: Okay.

5 MR. DILLEN: So, and it's just like --

6 MS. MACNAB: So he forced you physically as well  
7 as telling you to do this?

8 MR. DILLEN: Right.

9 MS. MACNAB: And do you remember what that felt  
10 like?

11 MR. DILLEN: No, I don't.

12 MS. MACNAB: (Inaudible.)

13 MR. DILLEN: It's -- it felt aggressive. I mean,  
14 like, I don't know -- yeah, I don't -- it felt  
15 aggressive. And, like, I'm defensive when people show  
16 me aggression, so --

17 MS. MACNAB: Uh-huh (affirmative.) But he was  
18 bigger than you as well (inaudible.)

19 MR. DILLEN: Right. I don't know, I still think  
20 I should have -- I mean, I've fought usually every other  
time in my life. I don't know. My body I guess just  
22 didn't allow me.

23 MS. MACNAB: Do you remember, besides feeling  
24 like you wanted to defend yourself against aggression,  
25 do you remember other things?

1           MR. DILLEN: I just felt weird and embarrassed,  
2 belittled.

3           MS. MACNAB: (Inaudible.)

4           MR. DILLEN: Yeah.

5           MS. MACNAB: Uh-huh (affirmative.)

6           MR. DILLEN: So --

7           MS. MACNAB: Okay. So then did -- I mean, after  
8 that was over, what happened? Did you go back up the  
9 hill or what?

10          MR. DILLEN: Yeah, he took me back, dropped me  
11 off --

12          MS. MACNAB: Did he say anything?

13          MR. DILLEN: Not really, just pretty much don't  
14 tell anybody about it.

15          MS. MACNAB: So he told you not to tell?

16          MR. DILLEN: Yeah.)

17          MR. ZIEGLER: He told you don't tell anyone about  
18 it, until many years later, when you're in therapy,  
19 being a fake accuser.

20          Now, Liz, Liz, you made a couple of really great  
21 observations while we were listening to that, about how  
22 Macnab is leading AJ maybe without even fully realizing  
23 it.

24          MR. DILLEN: Uh-huh (affirmative.)

25          MS. HABIB: Well, she put words in your mouth,

1 right? She's putting words in your mouth. He -- what  
2 did he say?

3 MR. ZIEGLER: He grabbed your head.

4 MS. HABIB: Yeah.

5 MR. ZIEGLER: He grabbed your head, huh?

6 MS. HABIB: And you felt helpless.

7 MR. ZIEGLER: Helpless, right?

8 MR. DILLEN: Yeah.

9 MR. ZIEGLER: I mean, did you feel that way, AJ,  
10 that she was doing that?

11 MR. DILLEN: She did that a lot, actually, in  
12 different ways, in terms -- so yes, I do. She used a  
13 lot of suggestive questions and a lot of just leading,  
14 like you said, throughout. But in that particular clip,  
15 yes, that's exactly what she did.

16 MR. ZIEGLER: I interpreted it this way: again,  
17 she's expressing skepticism at the beginning, "What time  
18 of day was this?" "It was in the daytime." "And nobody  
19 was worried about being caught?" And yet, her own  
20 skepticism dissolves when you provide any semblance of  
21 an explanation, some of which she provides for you.  
22 Like --

23 MS. HABIB: Is she providing skepticism or is she  
24 providing the story? I question that more.

25 MR. ZIEGLER: Well, here's the way I interpret

1 it: Part of her is saying there's a problem with this  
2 story, but she wants to believe it, so then she's  
3 looking for -- so it's almost like she's throwing you  
4 lifelines.

5 MR. DILLEN: Right.

6 MR. ZIEGLER: Like, "Okay, this story isn't very  
7 good but here's a lifeline. Did he grab your head? Did  
8 you feel hopeless? Oh, so, you know, you were just off  
9 the bike path, so no one could really see you, and so,  
10 okay, that was weird." I mean, you kept saying, "Yeah,  
11 it was really weird." I mean, of course, it was very  
12 weird because it didn't happen. I mean --

13 MR. DILLEN: Right.

14 MR. ZIEGLER: So the way I am interpreting it, I  
15 think she's having an internal struggle; that she's  
16 invested in the idea that all these guys are telling the  
17 truth about Jerry, but part of her, her brain part, her  
18 logical part is saying, "Wait a minute. This doesn't  
19 sound right," and yet, she's fixing the story, not in a  
20 conspiratorial way, but in the way of she feels like  
21 she's being a good therapist, she's helping you through  
22 this.

23 Does that make any -- to use her phrase, which  
24 we're about to hear twice, does that make any sense to  
25 you, AJ?

1           MR. DILLEN: Yeah, yeah. I mean, I think she's  
2 mentally torn. She wants to be a good therapist and she  
3 also isn't necessarily buying the story. But she  
4 definitely led me and, you know, I think she does mean  
5 well. Overall, I think she wants to do the best for the  
6 clients she sees, but...

7           MS. HABIB: Oh, that doesn't matter. That  
8 doesn't matter, what she means.

9           MR. DILLEN: Yeah.

10          MS. HABIB: It doesn't matter. That's why, if  
11 you're going to therapy with her for two years, you're  
12 getting something out of her, three years, whatever  
13 you're doing, it doesn't matter whether she means well.

14          If she believes, John, in repressed memory, uses  
15 a different dissociation, she can't fill in the holes,  
16 right? Does that make sense? "You don't remember? Let  
17 me fill in the holes for you. Did he push your head to  
18 you? Where were you on the bike path?" It's filling in  
19 the holes. Does that make sense to anybody?

20          MR. ZIEGLER: I agree with you, Liz, and I --

21          MS. HABIB: I mean --

22          MR. ZIEGLER: But I think it all goes to her deep  
23 investment in, one, the nature of therapy, the nature of  
24 sexual abuse, and in this particular case, the idea that  
25 Jerry is guilty, and that she didn't just see nine or

1 ten accusers for years who were telling a bullshit  
2 story. No one wants to believe that.

3 And so I think it's the natural inclination of  
4 the, to use a therapy term, the subconscious. It's like  
5 her subconscious is helping her through the skepticism  
6 because she wants to believe that this can't be a fake  
7 story, that no one would make a fake story, because she  
8 would be able to figure it out, because she's got a  
9 great BS detector.

10 MS. HABIB: Can I tell you, no one wants to  
11 believe that this is a fake story.

12 MR. ZIEGLER: Right. Yeah.

13 MS. HABIB: No one. No one anywhere would like  
14 to believe that Jerry Sandusky is innocent, sitting in  
15 jail, and that those accusers are lying. No one wants  
16 to believe it, because now everybody's been invested in  
17 the wrong thing.

18 MR. ZIEGLER: Ding, ding, ding, ding, ding.

19 Now, so we go further in the conversation, AJ,  
20 and we've got two clips here of her going -- she's  
21 basically into the mode of explaining, in my  
22 interpretation, why your story doesn't make all that  
23 much sense, why it's difficult for you to tell, and the  
24 nature of traumatic experiences.

25 And this goes, she's -- this is a constant theme

1 for her, in her belief about how we treat traumatic  
2 experiences differently in our memory, and here's what  
3 that sounded like.

4 (Audio clip was played:

5 MS. MACNAB: What I've been saying to you is it's  
6 not unusual for a traumatic experience to be remembered  
7 in that way. We lay down our memories, and maybe I've  
8 said this before, our memories of trauma are laid down  
9 in very -- you know, in a different way than just  
10 ordinary experiences.

11 So I could pretty much tell you a very linear  
12 account of, you know, getting up this morning and  
13 getting ready. There's nothing that really happened out  
14 of the ordinary when I was doing that, so I can just  
15 really go through, boom, boom, boom, like that. It's  
16 not difficult to do that.

17 A memory of, say, something like an automobile  
18 accident or something horrific that happens is often  
19 experienced in (inaudible.) and not in a linear way,  
20 because the brain has more trouble comprehending and  
21 taking in those experiences.

22 MR. DILLEN: Okay. So it's not out of the norm  
23 that this happened?

24 MS. MACNAB: Not for memories in trauma, no. But  
25 I can understand that for you, it feels really

1 frustrating because you want to know is my mind making  
2 this up or did something really happen, right?

3 MR. DILLEN: Right. I mean, that's pretty much  
4 what I want to know, yeah.

5 MS. MACNAB: And what -- so, the part that you  
6 told me today did not sound foggy.

7 MR. DILLEN: No, because I put these -- that's  
8 what I mean, I put it together.

9 MS. MACNAB: You put it together, uh-huh  
10 (affirmative.) And --

11 MR. DILLEN: In my own recollection, outside of  
12 dreams.

13 MS. MACNAB: So you have some pieces that didn't  
14 come in dreams?

15 MR. DILLEN: Right.

16 MS. MACNAB: What are those pieces, do you think?  
17 Can you say?

18 MR. DILLEN: The park. Like, I knew the park  
19 because, like, I remembered that much, but I couldn't  
20 remember -- I knew something bad happened but I didn't  
21 -- I didn't know what. And I would have these dreams  
22 and the park would be in these dreams, but it would  
23 never be like the park and the abuse together. It would  
24 be --

25 MS. MACNAB: You'd have dreams of the abuse but

1 not in context?

2 MR. DILLEN: Right.

3 MS. MACNAB: Not in the context of the park?

4 MR. DILLEN: Right.

5 MS. MACNAB: And you had a waking sense that  
6 something bad happened to you in the park, but you  
7 didn't know what?

8 MR. DILLEN: Correct. Like, in my dreams, there  
9 would be woods. It would be like woods, but it wouldn't  
10 necessarily be -- like, it wouldn't necessarily be  
11 completely descriptive of the park.

12 MS. MACNAB: So we've talked about dissociation,  
13 and I guess I'll go again to that to try to explain this  
14 to you. The mind has a lot of stuff built into it that  
15 helps protect it, and one of the things is dissociation,  
16 our ability to sort of disconnect when we're bored. Say  
17 you're driving down the highway. That's called highway  
18 hypnosis, where you don't remember, you couldn't  
19 describe the last mile or ten miles in terms of what  
20 you've seen, right?

21 MR. DILLEN: Right.

22 MS. MACNAB: Everybody's had that experience.  
23 But even more important is the ability to protect from  
24 what, to the mind, can be an overwhelming experience.  
25 So things like when you're in combat or an automobile

1 accident, being threatened in, say, a terrorist attack  
2 in a mall, you know, these are all outside the realm of  
3 ordinary, right?

4 MR. DILLEN: Right.

5 MS. MACNAB: So is rape, so is sexual assault,  
6 you know? Any time there's something that goes on that  
7 is really overwhelming in terms of being traumatically  
8 overwhelming, and I would say that some of what you're  
9 describing certainly fits into that.

10 MR. DILLEN: Right.

11 MS. MACNAB: So the mind does what it does. It  
12 sort of forgets pieces, forgets pieces or chunks them up  
13 so that you don't have to try to take in the whole  
14 overwhelming thing. Does that make any sense?)

15 MR. ZIEGLER: In a word, no, it doesn't make any  
16 sense.

17 MS. HABIB: No, it doesn't.

18 MR. ZIEGLER: And let's talk about why what she  
19 just said there doesn't make any sense. This idea that  
20 somehow -- and let's use the car accident as an example,  
21 because I think that's probably the best example that  
22 there is.

23 MR. DILLEN: Right.

24 MR. ZIEGLER: I've been in several car accidents,  
25 going all the way back to childhood. I remember vividly

1 being in the car accident. Now, could I tell you,  
2 without deep research, exactly what time of year and  
3 what year? No, but I could probably do it eventually,  
4 if I put the pieces together and I spend enough time  
5 doing it. But I know for a fact that they happened, and  
6 I know the nature of the car that they happened in, I  
7 know whether or not people got hurt.

8 I mean, that doesn't leave your memory, Liz. I  
9 mean, do you --

10 MS. HABIB: I totally agree with you. I've had  
11 traumatic things happen to me, and from the time I was  
12 very, very young, and I can't give you the details on  
13 them, I can't, but I know they happened. I know they  
14 happened.

15 MR. ZIEGLER: AJ, same with you?

16 MR. DILLEN: Yep.

17 MS. HABIB: Not that -- maybe one or two, maybe  
18 one thing, you know?

19 MR. ZIEGLER: But you don't forget that it  
20 happened. You might, by nature of the brain, you might  
21 not remember all the details, part of it, you know,  
22 there could be something to the brain protecting  
23 yourself, but you don't wipe it out completely.

24 And what really bothers me there, AJ, and she  
25 does not express, at least not on that tape, any

1 skepticism towards this at all, you bring in the idea  
2 that part of -- a huge part of how you decide that  
3 you're an abuse victim and how you, I guess for lack of  
4 a better term, recall your details of abuse is through  
5 dreams. Through dreams.

6 Now, nobody, nobody believes that a dream is a  
7 reliable indicator of reality, and yet -- so I didn't  
8 sense any skepticism towards your dream theory at all.  
9 Was there any?

10 MR. DILLEN: No, none.

11 MR. ZIEGLER: Now, that --

12 MR. DILLEN: But that's partly because she had  
13 said earlier that people can -- like, how they lay it  
14 down is, like, either they recall through dreams or they  
15 recall it -- something triggers it just at random. It  
16 could be the sound of a bell, it could be, you know --  
17 it's something that can trigger these memories. But  
18 otherwise, people forget, like, they -- not forget, but  
19 they don't -- they don't bring it to their conscious  
20 mind, so to speak.

21 MS. HABIB: But, you know, John, there's like --  
22 okay, so you don't think about something all the time,  
23 and then you'll hear a song and it'll remind you of  
24 somebody, right? So, that's true.

25 MR. ZIEGLER: Okay, but --

1 MS. HABIB: But not what's she saying. Not that  
2 you completely forget them, it just brings it back to  
3 your consciousness.

4 MR. ZIEGLER: Right. And to extrapolate on that,  
5 Liz, let's pretend you were abused by someone fairly  
6 famous, Jerry Sandusky, right, and it was traumatic, and  
7 you didn't want to think about it, right? I get where  
8 you don't want to think about it.

9 MS. HABIB: Yeah, right.

10 MR. ZIEGLER: But if it becomes a massive news  
11 story, that he is being accused of child sex abuse, and  
12 the whole world is talking about it, and your abuser is  
13 potentially going to be put away in prison for the rest  
14 of his life and not be able to abuse anyone else, I  
15 think you're probably going to realize, "Wow, yeah, I'm  
16 one of those guys and maybe it'd be a good idea for me  
17 to talk to somebody."

18 MS. HABIB: Yeah.

19 MR. ZIEGLER: I mean, you're not going to forget,  
20 "Oh, wow, shit, I totally forgot I was abused by Jerry  
21 Sandusky. I completely forgot that time when Jerry  
22 Sandusky told me to suck his dick. That just completely  
23 slipped my mind." I mean --

24 MS. HABIB: Especially because it's so hard to  
25 talk about. So hard to talk about, I just forgot about

1 it.

2 MR. DILLEN: Right.

3 MR. ZIEGLER: It's absurd. And I've got to tell  
4 you, I've tried to be -- I hope this comes across --  
5 I've tried to be as understanding as possible of where  
6 Macnab is coming from, but the idea there of her  
7 reliance on your dreams is, to me, that's game, set, and  
8 match, because, my God, dreams are bullshit.

9 I mean, and just to prove how much bullshit they  
10 are, you've told me, AJ, in thinking about this for so  
11 long and having gone through the therapy and created  
12 this concocted, false story of abuse, you've even  
13 wondered whether it was possible you were abused by  
14 Jerry Sandusky.

15 MS. HABIB: You have? Is that true?

16 MR. DILLEN: Yeah.

17 MS. HABIB: It's not funny. Is that true?

18 MR. DILLEN: Yeah, yeah, so (inaudible.)

19 MS. HABIB: No, I'm not saying is it true you  
20 were abused, I'm saying is it true that you wondered,  
21 like -- what? Go ahead.

22 MR. DILLEN: Yeah, I mean, just the way therapy  
23 progressed, I mean, I really -- there was a point where  
24 I told John, I'm like, "John, I can't do this anymore.  
25 Like, I'm now having, like, detailed visions or dreams

1 where I'm" -- because I've told this, you know, this  
2 story is messing with me. So, but I continued to see  
3 her, after talking with John as well, so finally ended  
4 it.

5 MR. ZIEGLER: But just to be clear, just to be  
6 clear, you know you were not abused by Jerry Sandusky,  
7 but this (inaudible cross-talk.)

8 MR. DILLEN: Correct, I do know that.

9 MS. HABIB: Or anybody else? Or anybody else,  
10 because you wonder --

11 MR. DILLEN: Correct.

12 MR. ZIEGLER: Okay.

13 MR. ZIEGLER: But -- but just to finish the  
14 point, this process was such that all these sessions  
15 with her made you at least wonder whether it was  
16 possible, correct?

17 MR. DILLEN: Correct.

18 MS. HABIB: That's extraordinary.

19 MR. ZIEGLER: Okay. Well, I think it goes a long  
20 way to showing how corrosive the therapy process is to  
21 telling a true story.

22 MS. HABIB: And how --

23 MR. ZIEGLER: Because here's someone who knows  
24 it's a false story, who starts to become convinced, "Is  
25 it theoretically possible it's true?"

1 MS. HABIB: Well, it goes to -- yes, it goes to  
2 that, but it goes to believing the victims, the guys who  
3 say they were victims. They could be exactly what AJ  
4 is, right?

5 MR. ZIEGLER: Right, exactly.

6 MS. HABIB: They begin to believe themselves now.

7 MR. ZIEGLER: Like D█████ S█████.

8 MS. HABIB: Yes.

9 MR. ZIEGLER: D█████ S█████, according to Mark  
10 Pendergrast who interviewed him, believes that this  
11 happened, he just can't remember it.

12 MR. DILLEN: Right.

13 MR. ZIEGLER: And the reason why he's been able  
14 to justify it is Cynthia Macnab told him that his  
15 memories were repressed, and she gave him this whole --  
16 I guarantee she gave him the whole song and dance that  
17 she gave AJ.

18 MS. HABIB: Wow.

19 MR. ZIEGLER: And Dustin's going, "Oh, wow, that  
20 makes sense," and "Oh, by the way, I'm now driving a  
21 souped-up Mercedes Benz because of it," which is true.  
22 So, that helps, you know? That helps a lot with the  
23 memory. Because I've seen the car. It's spectacular.  
24 I mean, he has much better taste in sports cars than the  
25 rest of these victims, D█████ does.

1           All right. Now, AJ, here's the last clip that  
2 kind of ends this session, where once again she goes  
3 down this path that doesn't make a lot of sense, but  
4 then asks the question, "Does that make any sense?"

5           (Audio clip was played:

6           MS. MACNAB: So I'm saying -- what I'm saying to  
7 you is a couple of things. One, that if some of the  
8 details of this are foggy, it's because your mind has  
9 been trying to protect you. Okay?

10          MR. DILLEN: Okay.

11          MS. MACNAB: I think what you can believe is,  
12 yeah, something bad did happen to me. It sounds like  
13 you have enough of that and the feelings that go with  
14 it, especially the shame and the anger. I don't think  
15 those feelings can be made up.

16          MR. DILLEN: Right.

17          MS. MACNAB: I think if your mind has sort of  
18 constructed this movie version of something, it wouldn't  
19 feel the way it feels to you when you're trying to talk  
20 about it. Does that make sense?

21          MR. DILLEN: It makes sense.)

22          MR. ZIEGLER: Did you really believe that made  
23 sense, AJ?

24          MR. DILLEN: No, it didn't make sense.

25          MR. ZIEGLER: Okay, I just wanted to make sure

1 you didn't really think that that made any sense. But  
2 she is really reaching. She's reaching for an  
3 explanation for why you told this story all these years  
4 in therapy, why the story doesn't make full sense --  
5 that's what, frankly, she should be asking, is why your  
6 story doesn't make any sense.

7 MR. DILLEN: Right.

8 MR. ZIEGLER: And, you know, how is it behind Joe  
9 Paterno's house, in a park, you're giving Jerry Sandusky  
10 oral sex, when you don't know what oral sex is, in the  
11 middle of the day? I mean, it's just --

12 MS. HABIB: It's so ridiculous. You know what's  
13 going through my mind, is I keep wondering what a  
14 therapist really does. Like, I've gone to therapy.  
15 I've gone to therapy so many times, I'm trying to  
16 remember what -- do they lead me? Do they -- would they  
17 sort of try to push me into being -- you're really not  
18 telling the truth? I mean, like, do you get what I'm  
19 saying?

20 MR. ZIEGLER: Well, to me --

21 MS. HABIB: Like, a therapist, is their job to  
22 analyze that? Are they --

23 MR. ZIEGLER: Having been in therapy myself and  
24 never gotten much out of it, my --

25 MS. HABIB: You know, honestly, I don't know what

1 you get out of it. In the end, you just told your story  
2 enough times that maybe you released it.

3 MR. ZIEGLER: Well, for some people, my view is  
4 that therapists are paid to make you feel better about  
5 yourself. I mean, that's essentially what the essence  
6 of this is.

7 MS. HABIB: That it's okay, accept yourself,  
8 something like that.

9 MR. ZIEGLER: Right. But this is a unique  
10 situation, because as we've already articulated, there's  
11 a lot going on here beyond just how someone feels about  
12 themselves. This is about money being taken from Penn  
13 State --

14 MS. HABIB: Oh, yeah.

15 MR. ZIEGLER: -- the criminal convictions,  
16 people's reputations and all that. And Cynthia Macnab,  
17 I mean, she does buy in, AJ.

18 MS. HABIB: Yes, yes.

19 MR. ZIEGLER: I guess we should point this out.  
20 She buys in not just to the accusers, she buys in -- and  
21 we don't have the clip of this but I want you to give us  
22 your recollection -- she buys in totally, for the  
23 record, to the entire coverup theory here and that the  
24 Penn State administrators should have been even more  
25 punished than they were. Is that accurate?

1           MR. DILLEN: That's accurate.

2           MR. ZIEGLER: Can you give us a sense?

3           MR. DILLEN: She goes on to talk about -- like,  
4 one of the things I remember is she talked about  
5 Spanier, Curley and Schultz, those three should have to  
6 go through apartheid.

7           MR. ZIEGLER: Okay, so --

8           MS. HABIB: Wait a minute. Okay, whatever.

9           MR. ZIEGLER: I mean, but regardless of what  
10 words she used, but she believes that they were not  
11 punished enough, correct?

12          MR. DILLEN: Right, she does not believe they  
13 were punished enough. In fact, I confront her about it,  
14 and I go, "Well, actually, Jerry Sandusky, for one of  
15 the same convictions, got three to six months." So they  
16 got longer, technically, than Jerry did for the same  
17 charge, although to be clear, Jerry had multiple  
18 charges, so he got 30 to 60. So, I just wanted to clear  
19 that up.

20          MR. ZIEGLER: Okay, well, that's not the path I  
21 would have gone down. The path I would have gone down  
22 is how can you possibly believe that this university was  
23 systematically covering up for the child abuse of  
24 someone who didn't even work there anymore? I mean,  
25 that doesn't make any damn sense.

1           MR. DILLEN: Right.

2           MR. ZIEGLER: I mean, plus, there's no evidence  
3 for it. But I think the reason why it's significant is  
4 it goes to how deeply her investment is and how willing  
5 she is to believe anything with regard to this case,  
6 even though here she is being confronted by a story that  
7 makes absolutely no sense, and while she has some level  
8 of skepticism, she's buying it hook, line and sinker,  
9 and she sees you for many, many years.

10          MR. DILLEN: Right.

11          MR. ZIEGLER: And we just heard there, in those  
12 five clips, you telling her a story that should have --  
13 I mean, AJ, if you were in her position and someone told  
14 you the story that you told her, what would your level  
15 of BS detector have been?

16          MR. DILLEN: I probably would have, in a nice,  
17 professional way told the client you're bullshitting me.

18          MS. HABIB: I don't know, though, you know? I  
19 don't -- not a therapist, right? Not a therapist.

20          MR. DILLEN: Correct.

21          MR. ZIEGLER: Well, they're not equipped --  
22 they're not equipped to do that. They're equipped to  
23 believe everything and anybody --

24          MR. DILLEN: They are.

25          MS. HABIB: Because that's what makes the person

1 feel whole, John.

2 MR. ZIEGLER: Right.

3 MS. HABIB: You just said it, you said it, that's  
4 what a therapist is there for, to make you feel better  
5 about yourself. It's not your fault this happened to  
6 you, right? It's an idea, you can describe it, let's  
7 move on, you know?

8 MR. DILLEN: Right.

9 MR. ZIEGLER: Now, let's move on to another clip  
10 where she does express skepticism about a different  
11 client of Andrew Shubin's who she also gave therapy to,  
12 Matt Sandusky.

13 (Audio clip was played:

14 MR. DILLEN: -- telling me to my face that Jerry  
15 never abused him and that he didn't believe -- I said,  
16 "Do you believe any of these stories?" He goes, "No."  
17 Hours later, he's nowhere to be found.

18 MS. MACNAB: Well, I mean, I think you're --  
19 you're not the only one who's questioned that.

20 MR. DILLEN: I'm not? I feel like I might be.

21 MS. MACNAB: Well, no (inaudible) how that was a  
22 little fishy. I don't but, I mean, it could be. It  
23 could be. He could have been lying about the whole  
24 thing.

25 MR. DILLEN: Okay, so if he could be lying about

1 the whole thing, what's to say that anyone else isn't?

2 MS. MACNAB: Anybody can lie.

3 MR. DILLEN: But isn't that a dangerous precedent  
4 to say?

5 MS. MACNAB: I'm not condoning lying.

6 MR. DILLEN: Right.

7 MS. MACNAB: I'm just saying I can't really know  
8 the truth of Matt Sandusky's story because I'm not  
9 inside his head, nor can I know the truth of anybody's  
10 story.)

11 MR. ZIEGLER: "I can't know the truth of  
12 anybody's story."

13 MR. DILLEN: (Inaudible.)

14 MR. ZIEGLER: Which is astonishing when you're  
15 their therapist. And let's be clear, back to the whole  
16 vetting thing, I am convinced that Shubin had faith in  
17 his clients because Macnab was signing off on them. Do  
18 you agree with that, AJ?

19 MR. DILLEN: Yes, I definitely agree with that.

20 MR. ZIEGLER: In other words, if Cynthia Macnab  
21 -- and he sent you to Macnab immediately, correct?

22 MR. DILLEN: He did.

23 MR. ZIEGLER: Right. So it was very much a  
24 vetting, it was part of this rudimentary vetting process  
25 that you went through. So if he doesn't get a report

1 back from Macnab saying that AJ is, you know, thumbs up,  
2 you're not going to be -- he's not going to be your  
3 lawyer, right?

4 MR. DILLEN: Right.

5 MR. ZIEGLER: So if we do this logically, he's  
6 relying on Macnab to vet his clients, we've already  
7 heard Macnab say she's relying on Shubin to vet his  
8 clients, and nobody's being vetted. Everyone's just  
9 going off of --

10 MR. DILLEN: Right.

11 MS. HABIB: John, you're making this straight-up  
12 legit, and I don't know how straight-up legit this is.  
13 What's the relationship between these two? Is Cynthia  
14 Macnab --

15 MR. ZIEGLER: Oh, she's making a lot of money  
16 from this.

17 MS. HABIB: Yes, yes.

18 MR. ZIEGLER: She's getting paid. But she would  
19 have clients regardless. I mean, she's not making extra  
20 money, in all likelihood.

21 MS. HABIB: And to be fair, she did say she  
22 believed Matt Sandusky and (inaudible.)

23 MR. ZIEGLER: Well, she did, but then she said --  
24 she does say he could be lying about the whole thing.  
25 And then she says she has no understanding -- I don't

1 remember the exact verbiage, but something to the effect  
2 of she doesn't know if he's telling the truth because  
3 she's not in his head.

4 MR. DILLEN: Right.

5 MR. ZIEGLER: Well, oh, I'm sorry, there's got to  
6 be more than that. I mean, she's -- what we're seeing  
7 here, Liz, is clearly Cynthia Macnab believes anybody  
8 who claims abuse, right?

9 MS. HABIB: Well, a therapist, wouldn't they have  
10 to? You can tell your story to me, I'm the safe place,  
11 you tell me the story. I'm not going to tell you I  
12 don't believe your story, that's what I'm here for.

13 MR. ZIEGLER: Well, I think what you've just hit  
14 on is a problem in the system, is that therapists, the  
15 last thing they're going to do is come to the conclusion  
16 that you're -- when someone claims abuse, that they  
17 weren't abused. They are trained to deal with it as a  
18 trauma and, therefore, it must be real. And even  
19 sometimes when you deny it, it's still real, and we're  
20 about to prove that.

21 So, this goes on for a little over three years,  
22 you're seeing Shubin, you're seeing Macnab, and the  
23 Newsweek story is supposedly coming out, and we're told  
24 by Newsweek to start shutting this thing down because  
25 we're anticipating this being a major part of the cover

1 story for Newsweek magazine. This would have been in  
2 early 2018.

3 And as part of the process for shutting down the  
4 sting, you decide -- or actually I suggested to you,  
5 because I was like, "Hey, let's go for pay dirt here and  
6 see what happens," I suggested that you tell her that  
7 you finally concluded that you're not actually a victim  
8 of Jerry Sandusky and see what she says about that.

9 And so tell us, AJ, based upon your  
10 recollection -- now we don't have the clip here for  
11 reasons that I'm not 100 percent sure of. It appears to  
12 be a technical problem. We have all this audio, and we  
13 can't find the right clip?

14 But you have a very strong recollection of this,  
15 and you told me about this contemporaneously, so tell us  
16 the story of what happens when you decide to tell  
17 Cynthia Macnab, "You know what? I wasn't really abused  
18 by Jerry Sandusky." Not that this was a sting, but that  
19 you've just decided, you know what, after going through  
20 all this therapy, I realize that my memories aren't  
21 real. Tell us about that.

22 MR. DILLEN: So I'm talking to her about -- you  
23 know, telling her that my story isn't real -- or not the  
24 story isn't real, but my -- I told her, like, I don't  
25 think I was abused by Jerry Sandusky. And she pretty

1 much, her exact words were, "Well, that's what a lot of  
2 abuse victims would say."

3 So, she was kind of shocked by that. Like, I'm  
4 telling her that, "Hey, I don't feel that I was abused,  
5 I wasn't abused," and she's like, "Well, that's what a  
6 lot of abuse victims would say."

7 And I was just -- I just couldn't -- I couldn't  
8 really wrap my head around that one. I'm like, "Well,  
9 then, so there's no out? It doesn't matter if somebody  
10 tells you they don't feel they were abused, or it  
11 doesn't matter if they straight tell you that they  
12 weren't abused, they were abused because that's what  
13 abuse victims would say?" So, like, I just couldn't get  
14 my head around that one (inaudible.)

15 MR. ZIEGLER: Well, it reminds me, and I know  
16 you're probably a little too young for this, I don't  
17 know about your movie tastes, Liz, but it reminds me of  
18 the Monty Python film, "Life of Brian," where Brian is  
19 thought to be the Messiah, and he finally screams at the  
20 crowd, "I'm not the Messiah, I'm not the Messiah, I'm  
21 not the Messiah." There's a pause, and then one of the  
22 followers says, "Only the true Messiah denies his  
23 divinity. So, therefore, you are the Messiah."

24 That's effectively the same phenomenon here, that  
25 there's no way out, right, AJ?

1           MR. DILLEN: Right, there's no way out. And I  
2 was just -- like, that, that is a pivotal moment in the  
3 entire thing for the simple fact I'm like, "Oh, my gosh,  
4 there is nothing, and absolutely nothing, we can do if  
5 somebody that's blatantly saying, 'Hey, I wasn't abused'  
6 is an indication that they were abused." Like, I just  
7 don't understand how we can get anywhere with  
8 understanding sexual abuse victims better, you know, and  
9 getting them justice and good therapy.

10          MR. ZIEGLER: So, where --

11          MS. HABIB: I'd like to know more about the --  
12 I'd like to know more about the other victims who said  
13 they weren't abused to her.

14          MR. DILLEN: Right.

15          MR. ZIEGLER: Well, I want to know where the hell  
16 is the audio? Where the hell is the audio of that, AJ?

17          MS. HABIB: Yeah.

18          MR. ZIEGLER: Where is it?

19          MR. DILLEN: I have to locate it. I mean, it's  
20 going to take me a minute to find it, because  
21 (inaudible.)

22          MR. ZIEGLER: A minute? We've been spending  
23 weeks trying to find this damn thing. I've been  
24 spending hours listening to you do therapy for years,  
25 trying to find the damn audio. I believe it, because

1 you've sent me hundreds of hours of stuff, or somewhere  
2 in that range, but it's been a great source of  
3 frustration that this particular clip, which again I  
4 believe because of our experience over all these years  
5 together to be true, and it certainly fits with  
6 everything else we know, but we have not yet found that  
7 audio clip. If we do in the future, we will provide it  
8 in a later version of the podcast. But I did think that  
9 story was important enough to at least tell.

10 MS. HABIB: Oh, it's very important.

11 MR. DILLEN: Absolutely.

12 MR. ZIEGLER: Now, so let's finish up Cynthia  
13 Macnab with a long clip. This might be the longest clip  
14 of her that we have, because she deals with a lot of  
15 different things here. She talks in remarkable detail  
16 about her experiences with the Sandusky accusers,  
17 probably inappropriately so. Of course, you know, I  
18 don't think she ever thought that this was going to be  
19 made public.

20 But to be clear, and once again, we've already  
21 referenced this, but you made it very known to her at  
22 the beginning of your sessions that you were recording,  
23 correct, AJ?

24 MR. DILLEN: That's absolutely correct. I let  
25 her know that because I have a tough time remembering

1 things and I thought it would be beneficial towards our  
2 therapy.

3 MR. ZIEGLER: Right. And the phone was always  
4 out, in full view?

5 MR. DILLEN: Yeah.

6 MR. ZIEGLER: The audio was clearly good enough  
7 to where that's obvious.

8 And so this begins with her assuring you that  
9 it's not your fault. It's not your fault that you're --  
10 essentially, that your story wasn't told immediately  
11 and, you know, it took so long to come out and has so  
12 many potential problems with it. But the more important  
13 part of this is, as it moves along and she starts  
14 talking about, one, her general philosophy of this issue  
15 and this case, and specifically the Sandusky accusers  
16 themselves, and here's what that sounded like.

17 (Audio clip was played:

18 MS. MACNAB: And that's not going to move him  
19 forward. You are not crazy because you didn't remember  
20 it. You need to know that.

21 MR. DILLEN: I must be crazy if I didn't remember  
22 it.

23 MS. MACNAB: No, no, you're not. You were trying  
24 to protect yourself. And it's not a defense that you  
25 chose to have, but it's the way that our -- it's the way

1 that we deal with overwhelming trauma. And that's been  
2 shown over and over (inaudible) so I don't know if  
3 that's what's bugging you, because you've asked that  
4 question a number of times. You've asked about how will  
5 I know -- you know, why didn't I remember, and it seems  
6 to be -- it seems to be troubling you, that question.  
7 I'm just trying to say to you that's one of the ways  
8 that we deal with trauma.

9 MR. DILLEN: Yeah, that's kind of -- well, I get  
10 that, but that's -- that's my fault then.

11 MS. MACNAB: No, absolutely not.

12 MR. DILLEN: Yes, it is. Yes, it is, because I  
13 neglected to say anything, I (inaudible) deal with it  
14 and, therefore, I neglected to get my own justice for  
15 myself, and as well as, you know, giving somebody a fair  
16 shot to defend themselves because I neglected to  
17 remember. Because I did that, there's really no  
18 justice. There's no justice for me, and there's no  
19 justice for the individual who harmed me.

20 MS. MACNAB: I don't --

21 MR. DILLEN: Because I should have remembered. I  
22 should have said something, and I didn't. And at the  
23 end of the day, the fact is I obstructed justice.  
24 That's what I did. I obstructed justice because I  
25 simply did not speak up. And I can't make excuses or

1 blame anybody for that other than myself, because I  
2 should have remembered. I should have done something,  
3 at least told somebody or whatever, you know? That's  
4 just what it is.

5 MS. MACNAB: A\_\_\_\_\_, you were a kid.

6 MR. DILLEN: It doesn't matter. It doesn't  
7 matter.

8 MS. MACNAB: It does matter.

9 MR. DILLEN: No, it doesn't, because that's just  
10 making excuses. Everybody in my life has told me don't  
11 make excuses for things. That would be like saying,  
12 well, I didn't mean to lie, I was just a kid. I didn't  
13 mean to hit that teacher, I was just a kid.

14 MS. MACNAB: No, no, no, we're -- no, no, we --  
15 there are some things in life that are choices and some  
16 things that are not, and I think it's very important for  
17 you to be able to distinguish what is a choice and what  
18 is not. When you talk about psychological defenses like  
19 that, they are not choices. There's something that  
20 kicks in automatically, the same way that when you see  
21 something terribly frightening and your heart rate  
22 increases, you can't control that, it's an automatic  
23 response. It's the part of your brain that deals with  
24 threat, basically, and that's a pretty primitive part of  
25 your brain. The part of your brain that deals with

1 problem solving and rational thinking is not online for  
2 that.

3 So, I see -- I mean, yesterday, I was driving and  
4 a deer ran right out in front of my car. I missed it  
5 by, it felt like, that much, you know? I respond to  
6 that, I slam on the brakes, I -- you know, my heart rate  
7 is up. I'm immediately kind of stressed (inaudible.)

8 MR. DILLEN: Yeah, but today you didn't forget  
9 that deer.

10 MS. MACNAB: No, but if I had been -- people,  
11 this is -- there's data for this. In certain  
12 situations, especially when you're young, that are  
13 overwhelming, people do forget.

14 MR. DILLEN: (Inaudible.)

15 MS. MACNAB: And I've talked to quite a few guys  
16 who were abused by Jerry Sandusky, and this is the case  
17 pretty much for all of them, they forget. Not really,  
18 because it's kind of back there, kind of back there --

19 MR. DILLEN: So did you, like, did you help them  
20 remember, or did you help them help --

21 MS. MACNAB: Some of them remembered on their  
22 own, like you did eventually, in more adulthood. I  
23 talked to a guy yesterday who's in his 20s and he didn't  
24 remember until the last six months, I would say, and he  
25 was, like, eight or nine when it happened.

1           MR. DILLEN: He was a Sandusky victim, eight or  
2 nine?

3           MS. MACNAB: Yeah, yeah. And he said -- I mean,  
4 his life is pretty much a mess, you know? And he said,  
5 "I never made the connection. I knew something wasn't  
6 right" but, I mean, he was doing all kinds of things to  
7 numb the pain of that and knew something wasn't right.

8           But it wasn't until just fairly recently that he  
9 kind of made those connections, "Oh, man, that's what  
10 that" -- and I don't think he's remembered all of it,  
11 unfortunately (inaudible.)

12           So, you're not alone in this. You really need to  
13 know that.

14           MR. DILLEN: Yeah.

15           MS. MACNAB: And you need to not blame yourself  
16 because that adds suffering to the suffering.

17           MR. DILLEN: Was he in court, at the trial?

18           MS. MACNAB: I don't want to say any more. I  
19 don't want to say -- was he in court at the --

20           MR. DILLEN: At the trial?

21           MS. MACNAB: No.

22           MR. DILLEN: No?

23           MS. MACNAB: No, because he --

24           MR. DILLEN: I ask because I wasn't, so I was  
25 just curious.

1 MS. MACNAB: You weren't one of the people who  
2 testified?

3 MR. DILLEN: Right.

4 MS. MACNAB: No, he didn't testify, in fact.  
5 Yeah, he didn't testify, because it's now, I mean, it's  
6 so many years, six years after, seven years after --  
7 five or six years after the trial.

8 MR. DILLEN: How many of these individuals have  
9 you seen other than me?

10 MS. MACNAB: I don't know. I'd have to do a  
11 quick count. In treating the group members, over ten.

12 MR. DILLEN: Over ten?

13 MS. MACNAB: Uh-huh (affirmative.)

14 MR. DILLEN: So you've got a pretty good, like,  
15 caseload, so you deal with a lot of them. To  
16 understand --

17 MS. MACNAB: Over the years, over the years, yes,  
18 yes, yes, yes. And the stories are remarkably similar.

19 MR. DILLEN: So even with mine?

20 MS. MACNAB: What do you mean? What do you mean?

21 MR. DILLEN: Like, are you saying they're similar  
22 to what I --

23 MS. MACNAB: I'm saying the stories, that there  
24 are many similarities in what happened to people and  
25 (inaudible.)

1 MR. DILLEN: And most didn't remember?

2 MS. MACNAB: Some didn't remember, some did, but  
3 they put it out in their minds, "I'm not going to think  
4 about that," didn't tell anybody. Nobody told anybody.  
5 Well, except the one '98 person who wasn't believed.

6 MR. DILLEN: (Inaudible) you said?

7 MS. MACNAB: '98.

8 MR. DILLEN: '98?

9 MS. MACNAB: Well, the one, you know, the one  
10 that went to Child Protective Services, and they  
11 (inaudible.)

12 MR. DILLEN: Yeah, they didn't believe him?

13 MS. MACNAB: Well, they believed -- that's not  
14 right. They deemed that there wasn't anything they  
15 could do (inaudible) there was nothing -- there was a  
16 gray area or something like that. (Inaudible) you know  
17 about that one.

18 MR. DILLEN: Yeah.

19 MS. MACNAB: That one was publicized.

20 MR. DILLEN: So they all have similarities with  
21 what I've expressed or feel?

22 MS. MACNAB: Yes, yes.)

23 MR. ZIEGLER: Wow.

24 MS. HABIB: Wow. Remarkable.

25 MR. ZIEGLER: Yeah.

1 MS. HABIB: I'm going to use that term, that is  
2 "remarkable."

3 MR. ZIEGLER: If Jerry Sandusky ever gets a new  
4 trial, I really hope that that is played very early on,  
5 because through that clip, the proper context of that  
6 clip I think exposes the entire case. And so let's go  
7 through it.

8 First of all, she says, let's put aside the whole  
9 traumatic -- you know what, let's not put it aside.

10 Let's one more time, let's talk about the  
11 traumatic experience thing because, Liz, you made a  
12 great comment which I thought was both funny and very  
13 prescient, about what impact it would have on real life  
14 if this was true, if we all went around having no idea  
15 that we've experienced traumatic things, right? How --  
16 I mean, we're already dysfunctional as a society. How  
17 dysfunctional would things be?

18 MS. HABIB: I mean, you just -- that doesn't  
19 happen. Our minds don't make us forget. We couldn't  
20 live our lives.

21 MR. ZIEGLER: There's a reason why children only  
22 touch a hot stove once.

23 MS. HABIB: Exactly.

24 MR. ZIEGLER: Once, you do it once, because you  
25 don't forget.

1 MS. HABIB: Right.

2 MR. ZIEGLER: If we did have, if life really was  
3 like --

4 MS. HABIB: It makes no sense.

5 MR. ZIEGLER: If life was like Cynthia Macnab  
6 says, we would all constantly be going --

7 MS. HABIB: We'd be burning ourselves all the  
8 time, John. We would walk around, we'd be burning our  
9 hands constantly.

10 MR. ZIEGLER: Right. And OJ Simpson would be  
11 married, like, 18 times, because no one would have any  
12 hesitation whatsoever. I mean --

13 MS. HABIB: Yeah. No, when somebody -- yeah,  
14 when somebody slaps you silly, you'd forget.

15 MR. ZIEGLER: Right. So, I mean, okay, so it's  
16 absurd.

17 But let's talk about the Penn State part of this.  
18 So she says there, she acknowledges that she has treated  
19 over ten of these guys, over ten, if you include the --

20 MS. HABIB: Yeah, that's --

21 MR. DILLEN: Correct.

22 MR. ZIEGLER: -- if you include the group  
23 sessions. Now, we know, we know of those ten who are  
24 victim number two, victim number three, victim number  
25 seven, and victim number ten, okay? That's a huge --

1 that's -- you blow out the entire frickin' trial if  
2 these guys are not legitimate. And she says, "For  
3 pretty much all of them, they forgot." "For pretty much  
4 all of them, they forgot."

5 MR. DILLEN: Right.

6 MR. ZIEGLER: And which then brings in the  
7 specter of, you know, just like D\_\_\_\_\_ S\_\_\_\_\_, is she  
8 helping them remember? Now, she says some remembered on  
9 their own but -- I love this -- that all the stories are  
10 remarkably similar.

11 MS. HABIB: Right.

12 MR. ZIEGLER: Well, guess what they all have in  
13 common? Andrew Shubin. They all come from Andrew  
14 Shubin, who we already know, we have on tape, you  
15 created, he created your story.

16 MR. DILLEN: Correct, he did.

17 MR. ZIEGLER: So if he did it for you, did he not  
18 do it for all these other guys that came to her, whose  
19 stories are "remarkably similar?"

20 And then, as if it can't get any better, she  
21 talks about this brand-new Sandusky accuser, who I don't  
22 even know who this is, right?

23 MR. DILLEN: Right.

24 MR. ZIEGLER: I mean, my guess is, my guess is --  
25 I would like to believe this is someone who, like you,

1 never actually got a payout because he came too late.

2 Who knows. It sounds like he also might have been  
3 outside the statute of limitations, I'm not sure.

4           But the claim is, I just talked to someone who  
5 just realized six months ago that they were abused, even  
6 though they're -- oh, no, I guess they were in the  
7 statute of limitations, they're in their 20s now. But  
8 back when they were eight or nine, eight or nine they  
9 were abused by Jerry Sandusky. They had no memory of it  
10 until recently, it just kind of hit them that something  
11 in their life wasn't right.

12           MR. DILLEN: Yeah.

13           MS. HABIB: In the history of mankind, there has  
14 never been a case of repressed memory that so many  
15 different people, from different walks of life have  
16 forgotten something.

17           MR. ZIEGLER: Well, the magic dust that Jerry  
18 Sandusky had --

19           MS. HABIB: Yeah. Men in Black, you know, when  
20 they -- right, right.

21           MR. ZIEGLER: Right. But this is important. I  
22 want to go down this story further, because I think this  
23 is the core of what really happens here in a lot of  
24 these cases. She says, "His life is pretty much a  
25 mess," and then clearly she implies he's doing a lot of

1       drugs, right?

2           MS. HABIB: That's what it sounded like to me.

3           MR. DILLEN: Correct.

4           MR. ZIEGLER: He's doing a lot of drugs, okay.

5           MS. HABIB: Because he does something to numb the  
6 pain.

7           MR. ZIEGLER: Right, right. Okay, so let's go  
8 through what really happens here. In a rational world,  
9 if her BS detector is even on at all, what really  
10 happens here is this guy fucked up his life. He's a  
11 drug addict, he's in his 20s, he's got no job, he  
12 probably has kids with a baby mama that he's not married  
13 to, divorced, paying alimony, whatever, his life is  
14 shit. And he was a Second Mile -- plausibly a Second  
15 Mile kid who realizes, "You know what? Gee, my life  
16 would make a hell of a lot more sense, and it'd be a  
17 hell of a lot better going forward, if I was abused by  
18 Jerry Sandusky."

19           MS. HABIB: Or if I could get money. Drug  
20 abusers are, you know, addicts are well.

21           MR. ZIEGLER: Right, right.

22           MS. HABIB: You know, that's the pattern, they  
23 want money, and they'll lie to get it.

24           MR. ZIEGLER: But this is late in the process.  
25 This is at least 20- --

1 MS. HABIB: It's worth a try.

2 MR. ZIEGLER: This is, like, 2017, right?

3 MR. DILLEN: Right.

4 MR. ZIEGLER: I mean, this is very late in the  
5 process. So at best, at best this guy's remembering in  
6 2016, four years plus after Jerry is convicted, that he  
7 was abused in a time period which, by the way, doesn't  
8 fit with anybody else's story. There's nobody else  
9 who's eight or nine years old, no one, no one.

10 MR. DILLEN: (Inaudible.)

11 MS. HABIB: But he doesn't know. He doesn't  
12 know, because (inaudible.)

13 MR. ZIEGLER: No one else in this entire story is  
14 eight or nine. And so she doesn't, "Go wait a minute.  
15 Hold on. All these stories are remarkably similar  
16 except for this eight or nine-year-old," and she doesn't  
17 see the inherent motive, which I cannot tell you how  
18 strongly I believe this played in all of this, these  
19 guys are from at-risk homes, their lives are shit, many  
20 of them, there's nothing a human being wants more other  
21 than money. They want money, and they want an excuse  
22 for why they fucked up their life. And being abused by  
23 Jerry Sandusky solves all of that instantaneously.  
24 Instantaneously your money problems are gone, and  
25 instantaneously, you have an excuse for everything

1 that's ever happened in your life.

2 MS. HABIB: And everything you do.

3 MR. ZIEGLER: Right, everything --

4 MS. HABIB: Oh, that's okay, he's a -- you know,  
5 he was sexually abused by Jerry Sandusky. Yeah, come  
6 on.

7 MR. ZIEGLER: And then she says to AJ, "You're  
8 not alone in this, AJ."

9 MS. HABIB: Yeah, and it doesn't matter. It  
10 doesn't matter if you're alone or not alone. That  
11 comment, too, it's like, what does it matter? But  
12 anyway --

13 MR. DILLEN: Right.

14 MR. ZIEGLER: But she's trying to make you feel  
15 better about why your story sucks.

16 MS. HABIB: Yes, that's why.

17 MR. ZIEGLER: Right?

18 MR. DILLEN: Right, yeah.

19 MR. ZIEGLER: And what are you thinking as she's  
20 doing this?

21 MR. DILLEN: I'm just like, when she said the  
22 similarities between you and other stories, I'm like,  
23 "Wow, that's game-changing," because I'm freaking  
24 sitting here bullshitting you this whole time, and if my  
25 story is similar, then they're all bullshit. If you're

1 buying mine, they're all bullshit, because you can't  
2 determine who's telling the truth and who's not. So,  
3 they have to be bullshit by default. Like, there's --

4 MR. ZIEGLER: Well, logically that doesn't prove  
5 that they're all bullshit, but it certainly raises the  
6 specter that they could all be bullshit.

7 MR. DILLEN: Right.

8 MR. ZIEGLER: But it is important to point out  
9 that she clearly, in that clip, believes you. I mean,  
10 she doesn't -- forget about -- there's no skepticism.  
11 She's so believing you. She's going out of her way to  
12 try to make you feel better about why your story might  
13 not be believable. I mean --

14 MR. DILLEN: Right, she is. She absolutely is.  
15 You could hear it in her tone, what she says, she's  
16 absolutely believing my story, you know, in the sense of  
17 -- and being supportive in that sense.

18 MR. ZIEGLER: And then there's one other aspect  
19 from a substantive standpoint, Liz, that I think is  
20 really important, and this happens constantly. We've  
21 seen it with Shubin, we've seen it with Ira Lubert,  
22 where people who are at the center of this story have no  
23 concept of the actual facts. She pinpoints one accuser  
24 who said something contemporaneously.

25 By the way, that's actually fairly accurate. She

1 references the 1998 accuser, victim number six, then she  
2 says he wasn't believed in 1998. Now, you picked up on  
3 this, AJ. You were, like, "Wasn't believed? What do  
4 you mean wasn't believed?" He was absolutely -- he  
5 didn't say anything happened, I mean --

6 MR. DILLEN: Correct.

7 MR. ZIEGLER: So what do you mean he wasn't  
8 believed? In other words, he wasn't sent to the right  
9 people to get him to say something different than what  
10 he was actually saying.

11 MS. HABIB: I mean, I didn't catch that.

12 MR. ZIEGLER: He was absolutely believed. He  
13 said nothing happened. He said he got picked up in a  
14 shower, that was it, and he was believed, and the DA  
15 said there's not enough evidence to make a charge here,  
16 this is determined to be unfounded.

17 And she references -- I love this. This might be  
18 my underrated line in that entire eight-minute or  
19 seven-minute clip, whatever it is. She says, "Well, it  
20 was determined to be in a gray area." What the fuck is  
21 that? A gray area? There was no -- he said there was  
22 no abuse, the DA said there was no abuse, the 1998  
23 accuser continues on with an 18-year relationship with  
24 Jerry Sandusky. Actually, it was not 18, it was a 13  
25 year, 13-year relationship after this, where he's

1 sending Father's Day messages, where "I love you."

2 Where's the gray area? If that is the gray area,  
3 then we're completely all screwed. And for the record,  
4 victim number six, Z█████, ends up getting the least  
5 amount of money of all the trial accusers from Penn  
6 State because he had the audacity --

7 MS. HABIB: To tell the truth.

8 MR. ZIEGLER: -- to not lie.

9 MS. HABIB: Right, to not lie. Okay, yes.

10 MR. DILLEN: Wow.

11 MR. ZIEGLER: I mean, he got the least amount of  
12 money by far because he stuck with basically -- now, he  
13 made it more nefarious on the edges, and he gave the  
14 prosecution what they wanted, but considering the  
15 pressure he was under and the motivations he had, it's  
16 absolutely remarkable that he stuck to his basic story,  
17 which was in 1998, there was no actual sexual abuse.

18 And the proof of this is the jury's, I believe,  
19 their only question, I know it was by far their most  
20 important question to the judge during deliberations,  
21 was effectively, if we don't believe victim six was  
22 sexually abused, can we still convict Sandusky?

23 MS. HABIB: Wasn't this the case, though --

24 MR. DILLEN: Right.

25 MS. HABIB: Or wasn't this the grooming-type

1       thing, the grooming question, right?

2           MR. ZIEGLER: Right, right. So, in other  
3 words -- and the judge said, "Yeah, sure, knock yourself  
4 out."

5           MS. HABIB: Yeah, the judge is beautiful.

6           MR. ZIEGLER: Right? So knock yourself out, and  
7 it was at that moment that Joe Amendola knew it was  
8 over. He didn't have the heart to tell Dottie and Jerry  
9 Sandusky, but he knew that if the jury is asking that  
10 question and the judge is giving them that answer, this  
11 thing is over with and we're hosed.

12          But the reality is that if it's true, that what  
13 they -- I believe here's what I think happened: I  
14 believe that the jury decided, to your point, Liz, that  
15 this was a grooming act, that he intended to sexually  
16 abuse, Jerry Sandusky -- I mean, (inaudible.)

17          MS. HABIB: I think Z [redacted] I think, came to  
18 believe that.

19          MR. ZIEGLER: Right, right, that this was an act  
20 of grooming where Jerry intended to commit sex abuse but  
21 never actually got around to it. And so --

22          MS. HABIB: Or, you know, or stopped because he  
23 got caught as he was doing it, you know?

24          MR. ZIEGLER: And then, I guess, that the 13-year  
25 relationship afterwards was cover, that was a cover. It

1 was an elaborate cover for the fact that he got caught  
2 trying to abuse Z█████ but never actually abusing him. So  
3 that's what the basis of the convictions in the 1998  
4 case were. But, so, I was astonished.

5 AJ, were you also astonished by Cynthia Macnab's  
6 view of the 1998 case?

7 MR. DILLEN: Yeah, but I also understood it,  
8 because she referenced in one of our meetings, and I  
9 kind of tore up over it, her partner at that place, that  
10 house/therapy area is shared with Alicia Chambers, and  
11 we got into it about, well, you know, yes, I get Alicia  
12 did this '98 accuser, but it went unfounded. And I go,  
13 "If it went unfounded, it didn't happen," and then she  
14 called me out on that and was like, "No, I'm not saying  
15 it didn't." Like, an unfounded report doesn't mean that  
16 an abuse didn't happen, but it's not something you can  
17 hold somebody accountable to. Because it went to  
18 Harrisburg, and Harrisburg decided to pass it on to Ray  
19 Gricar, and Ray Gricar is the one that needs to make a  
20 decision on the charges, and he neglected to. So that  
21 means that what I was telling her is it didn't happen,  
22 so we had another conversation about the '98  
23 (inaudible.)

24 MR. ZIEGLER: Well, hold on. You said something  
25 important there, though. So, she has a relationship

1 with Chambers, the therapist who evaluated the '98  
2 situation?

3 MR. DILLEN: Yes. In fact, it was Alicia  
4 Chambers, Janet McCracken, and her that were considering  
5 putting me in this group. Well, mainly Janet and  
6 Cynthia wanted me in the group, but Alicia Chamber's  
7 door was downstairs and me and Cynthia met upstairs.

8 MR. ZIEGLER: And this was the group sessions  
9 that you were originally going to be involved with but  
10 then were told by Cynthia Macnab that you were too angry  
11 to actually take part in?

12 MR. DILLEN: Correct.

13 MR. ZIEGLER: And so she has a professional  
14 relationship with the therapist who evaluated the 1998  
15 situation?

16 MR. DILLEN: Right. And I even told her you have  
17 a biased view. I was like, "You're saying that because  
18 she works with you." And she acknowledges that Alicia  
19 Chambers worked with her, and I said, but the police  
20 have a job to do, and they can't, you know, if they did  
21 their job -- but she's like, the she kind of made a  
22 sexist statement, she's like, well, it shouldn't even  
23 have been a male that evaluated that '98 case, and I  
24 call her on that, I'm like, you're being sexist, I said,  
25 why? She's like, well, a female would have been better

1 qualified, since it was male on male abuse. Now, to  
2 some degree, somebody's -- we could accept that, but you  
3 know, it was (inaudible.)

4 MS. HABIB: No, no, no, we can't accept. We do  
5 not accept that.

6 MR. ZIEGLER: Whoa, whoa, that's a -- that's a  
7 big problem.

8 MS. HABIB: Yeah, that's an issue.

9 MR. ZIEGLER: That's, actually, that's  
10 fascinating, because let's remind people what happened  
11 in '98. There were two evaluations, neither of whom, by  
12 the way, interviewed Jerry Sandusky. Let's be clear  
13 about that.

14 MR. DILLEN: Right.

15 MR. ZIEGLER: There was Chambers, who was the  
16 female, and then there was a male, whose name is  
17 escaping me at the moment. But the male said he did not  
18 see an indication that this was an episode of child sex  
19 abuse; Chambers said that she thought that it was.

20 MR. DILLEN: Correct.

21 MR. ZIEGLER: Now, that's fascinating to me, that  
22 you -- that Macnab told you that Chambers should have  
23 been the one that was listened to because she's a  
24 female. And I think --

25 MR. DILLEN: Correct, that's what she said.

1           MS. HABIB: That should have nothing to do with  
2 it at all.

3           MR. ZIEGLER: Well, I agree that it should have  
4 nothing to do with it, but I actually believe it should  
5 be the opposite.

6           MS. HABIB: Right. And we talked about this,  
7 John, how women and men see this differently, yes. It's  
8 possible --

9           MR. ZIEGLER: This is a big issue. This is maybe  
10 -- this is a core issue for why this story got sideways.  
11 And I know it's -- I'm sure it sounds sexist when I say  
12 it because I'm a male, but it cannot be underestimated  
13 how many females are key to how this story evolves.

14 Sara Ganim, Jessica Dershem, Jonelle Eshbach, Linda  
15 Kelly, the AG, Cynthia Macnab, Chambers, the therapist  
16 in the '98 case, these are all women.

17           MS. HABIB: It sounds sexist, okay? You want to  
18 make your point, and I'm going to tell you something  
19 about it.

20           MR. ZIEGLER: Well, just to make the point  
21 again --

22           MS. HABIB: Okay, so it's terrible. It sounds  
23 sexist, like you're saying the women are pushing this  
24 through. But you and I had a big conversation about how  
25 women sort of may see this differently, right? So I ran

1 it past my mom and my brother, my older brother and my  
2 mom, and I started talking to them about showering with  
3 boys, and this is a, you know, football situation or a  
4 blah, blah, blah, and, you know, my mother saw it one  
5 way, shouldn't be showering with boys. My brother,  
6 right, said "Oh, no, we -- the coaches were around, we  
7 did things like that. That was ordinary."

8           "Wait a minute, mom, Liz might be right. Wait,  
9 wait, mom, Liz might have a point." Not Liz might be  
10 right but, you know, that kind of thing. I don't think  
11 it was like that kind of thing.

12           But I think he was -- my brother was far more  
13 willing to accept -- who wrestled and played football  
14 and did all this -- was far more willing to accept that  
15 it was acceptable to go into a shower with an adult man.

16           MR. DILLEN: Well, and can I point out something?  
17 Because this is real-life experience. So, I wrestled  
18 for -- in high school for a little bit, before it broke  
19 my arm, And they would shower in communal showers,  
20 because the high school had a communal shower. So when  
21 you were done wrestling, you went to the showers, you  
22 got on the late bus, and went home. Everybody was in  
23 there naked.

24           Now, me personally, I just -- I would shower a  
25 few times, you know, throughout the wrestling season,

1 but most time I liked to go home because I just -- I  
2 never felt comfortable showering in any communal shower,  
3 regardless of gender, of course, but, you know.

4 MR. ZIEGLER: Right. Okay, and again, I don't  
5 want to overdo this, but I also don't want to leave this  
6 hanging without fully explaining where I'm coming from  
7 on the biological element of this.

8 MS. HABIB: There's a bias that Cynthia Macnab  
9 has.

10 MR. DILLEN: Correct.

11 MR. ZIEGLER: A woman, just simply from an  
12 anatomical standpoint, a male and a female are made  
13 biologically to fit together in some way that is more  
14 logically plausible than the acts that are being  
15 alleged, some of them in the Jerry Sandusky situation,  
16 especially with a heterosexual teenage boy.

17 I mean, AJ, if your story had been real, at the  
18 age of 13 and Jerry Sandusky had asked you to suck his  
19 dick, what would your real-world reaction have been to  
20 that?

21 MR. DILLEN: Knowing my past, knowing my  
22 character, I would have probably assaulted him. Or ran,  
23 done anything.

24 MR. ZIEGLER: Yeah, I mean --

25 MS. HABIB: (Inaudible.) Yeah, but everyone can

1 assume they're going to do a certain thing --

2 MR. ZIEGLER: Okay, all right, but a woman -- but  
3 again, I'm not criticizing women as a gender -- a woman  
4 doesn't have a penis. I'm sorry to break this to  
5 people, but a woman does not have the organ that is at  
6 the center point of all these allegations. And they  
7 don't have a penis when they're in their 60s and have no  
8 testosterone and no balls, and it doesn't fucking work.

9 I mean, and they're being accused of anally  
10 assaulting teenage boys who are heterosexual. It's a  
11 preposterous allegation if you're a male. A female  
12 isn't going to fully understand that. To use Cindy  
13 Macnab's phrase, does that make sense, Liz?

14 MS. HABIB: You know, John, you're making a lot  
15 of sense to me, but I never thought about it like that.

16 MR. ZIEGLER: Okay. Right, because you don't  
17 have a penis. I mean, so --

18 MS. HABIB: Until you brought it up, and then I  
19 started bringing it up to --

20 MR. DILLEN: That's why you didn't think about it  
21 like that, you know, but that's fair.

22 MS. HABIB: Right, but then I started bringing it  
23 up to people I trust would give me the right opinion,  
24 and those are my brothers, and at least one of them  
25 said, yeah, that's -- you know, we showered with the

1 coaches sometimes.

2 MR. ZIEGLER: Right.

3 MS. HABIB: That doesn't -- that's not that  
4 crazy, what you're saying.

5 MR. ZIEGLER: All right, so let's move on now to  
6 how this sting operation, after several years, finally  
7 ended, not in the way that we really wanted but at least  
8 in a way that does verify the validity of the effort.  
9 We're about to prove that even when you say, after  
10 you've been in therapy for years with a person, "You  
11 know what? I've concluded never mind, I wasn't actually  
12 a victim," she's going to tell AJ in a moment, no,  
13 actually, that's a sign you were a victim. Because  
14 there's no scenario where you're not abused.

15 I mean, there is no scenario. If you say you  
16 were abused, you were abused. If you say you weren't  
17 abused, you were abused, because that's also a sign of  
18 abuse. And so before we hear the clip, Liz, I want to  
19 set up why this happened, and we're going to get into  
20 further detail in a later episode about this whole  
21 Newsweek fiasco.

22 But AJ, just to set this up, we were told by  
23 Newsweek magazine that your story was going to be a  
24 centerpiece of a cover story in Newsweek, blowing up  
25 this whole thing. This was in late 2017, early 2018.

1 You actually were even in contact with the managing  
2 editor at Newsweek at a time, Bob Roe. You exchanged  
3 e-mails over this. You know, he was enthralled with  
4 your story.

5 And Newsweek had effectively informed us that it  
6 would be a good idea to stop the sting operation before  
7 the Newsweek article came out. Can you verify what I  
8 just said? Is that all accurate?

9 MR. DILLEN: Yeah, that is all accurate. I was  
10 really frustrated at them canceling that because -- I  
11 don't know, apparently, it was a lawyer decision. But  
12 it still frustrated me because this is, as you say, the  
13 greatest story never told. Like, they would have just  
14 done a tremendous job.

15 And at the time, they were struggling  
16 financially, too, so I don't know why they didn't take  
17 the story.

18 MR. ZIEGLER: Well, what ends up, the short --

19 MR. DILLEN: But yeah, that's accurate.

20 MR. ZIEGLER: -- the short version of what  
21 happens is that Bob Roe, who understood the story  
22 because he had worked on the McMartin Preschool case  
23 here in Southern California and understood how easily  
24 this could happen, he got fired right in the middle of  
25 this, having nothing to do with --

1           MR. DILLEN: He did get fired.

2           MR. ZIEGLER: -- having nothing to do with this.  
3 And so now there's nobody at Newsweek who is invested in  
4 this story going forward, and at literally the very last  
5 second, they pulled the plug in an act of gutlessness,  
6 which I had predicted all along. I'll tell you the full  
7 sad saga of that in a later episode.

8           But as part of the process of shutting down the  
9 sting, a couple of key things happen. I tell AJ, "AJ,  
10 go tell Cynthia Macnab you're not a victim and see what  
11 she says."

12           Because I sensed, Liz, that she would do pretty  
13 much exactly what she does, which is to say, "No, no,  
14 no, you actually are a victim, and that saying you're  
15 not a victim is evidence that you are a victim."

16           AJ, again for verification, is that a fair  
17 assessment of how this was going down?

18           MR. DILLEN: Yes.

19           MR. ZIEGLER: All right. So, here -- is there  
20 anything else we need to know to set up this audio clip  
21 as far as the context is concerned?

22           MR. DILLEN: No, I think you've summarized it  
23 almost as what the clip will say.

24           MR. ZIEGLER: Okay, so here is the audio of AJ in  
25 an attempt to shut down the sting to prepare for the

1 Newsweek article, which unfortunately never happens, by  
2 telling Cynthia Macnab, "Guess what? The last three  
3 years I've determined, you know what, I was not a victim  
4 of Jerry Sandusky," and here's what transpires.

5 (Audio clip was played:

6 MR. DILLEN: -- really been tormented with my  
7 back and forth, and I feel comfortable feeling like, you  
8 know, I can live with myself, knowing that I feel more  
9 positive I wasn't abused than I was.

10 MS. MACNAB: So, what have I said that made you  
11 -- convinced you of that?

12 MR. DILLEN: Just technique, suggestions, you  
13 know --

14 MS. MACNAB: Technique? What do you mean?

15 MR. DILLEN: Well, I don't know. Just, I think,  
16 through talking over the years, you know, you've been,  
17 like I said, you've been very helpful because, like, I  
18 was always back and forth, and I never felt, like,  
19 decisive or I never felt I was certain or sure. And,  
20 you know, just through talking with you, I just feel  
21 like I can be -- I can live with myself better, knowing  
22 that I'm more certain that I wasn't abused than I am  
23 certain that I was. And --

24 MS. MACNAB: I understand that's the conclusion  
25 you've come to, but I want to understand exactly how you

1 got there because -- this is not something that I would  
2 necessarily agree with you on.

3 MR. DILLEN: Well, I mean, like, I had to answer  
4 questions that, you know, you had suggested to me and I  
5 had to deliberate on them and, you know, really dig deep  
6 in my soul and my heart and my mind to answer those  
7 questions.

8 And every time -- well, not every time but, you  
9 know, lately, every time that I've come up with them,  
10 you know, I don't have confidence in feeling like I was  
11 really abused. I don't know if, like, I wanted to think  
12 that or something came to my mind that made me but, you  
13 know, I have had dreams of abuse and, like, thoughts  
14 that maybe this occurred, and I don't feel it did.

15 I felt like, more like -- like the more I thought  
16 about it, the more my mind was playing tricks on me, you  
17 know, and the more suggestion, the more it got real.  
18 And so I had to take some time and really seclude  
19 myself, and I just don't think I feel comfortable  
20 pursuing anything when I'm not 100 percent sure. I  
21 mean, that's --

22 MS. MACNAB: So what do you make of -- I had  
23 understood that you had some specific memories of abuse.

24 MR. DILLEN: Like I said, I mean, like, those  
25 memories, yeah, I had some memories, but I don't know if

1 I was just -- if my head was playing tricks on me or  
2 whatever. I mean, they would come in dreams or they  
3 would come in things you would suggest, and then it  
4 would get worse --

5 MS. MACNAB: I did not suggest things to you. I  
6 never suggested any memories to you.

7 MR. DILLEN: No, I didn't say you suggested  
8 memories, just like coping mechanisms or things I  
9 could -- I could focus on and, you know, just  
10 remembering, like, trying to remember the past events or  
11 trying to remember things that were around that time  
12 period and what was going on and, you know, trying to  
13 make sense of the dreams, you know?)

14 MR. ZIEGLER: So, AJ, you weren't direct about  
15 it. You were kind of dancing around this idea that you  
16 weren't abused, but you tried to make it clear that you  
17 weren't while actually not saying that. What was your  
18 strategy there? Why didn't you just come out and say,  
19 "I wasn't abused"?

20 And it appears as if you, and at least she takes  
21 it this way, she's very defensive about your implication  
22 that she was suggesting things to you. So what did you  
23 make of that and what was your strategy there?

24 MR. DILLEN: My strategy was to try to get her to  
25 basically elaborate on -- or try to get that

1 conversation of her referencing repressed memories or  
2 just her -- you know, because I didn't think at the time  
3 it would be good enough just for her to be like, "Okay,  
4 well, you're saying you're not abused" -- and at this  
5 time, she had already sent me to -- she gets mad because  
6 she had sent me to a psychiatrist in Vermont, and  
7 basically they were doing a psychiatric exam. What do  
8 you call those, the NPI or whatever?

9 So she had that all funded and went through the  
10 insurance carrier to get it all funded, and I'm telling  
11 her at this moment, after that's pretty much been done,  
12 that I don't believe I'm a victim. So she's mad because  
13 she went out of her way to get this psychological exam  
14 done for me, and I'm now telling her I wasn't a -- I  
15 don't believe I'm a victim.

16 MR. ZIEGLER: All right, now to be clear, because  
17 I don't know if it was -- and unfortunately, we're  
18 having -- the audio on your phone is terrible, but what  
19 you're saying is that there was an extra layer of if  
20 there was any vetting here, that you were sent to a  
21 psychotherapist, right, --

22 MR. DILLEN: Yes.

23 MR. ZIEGLER: -- to evaluate you? And that  
24 psychotherapist also signed off that you were a Sandusky  
25 victim, correct?

1           MR. DILLEN: Yeah, I believe so, that she was a  
2 part of the process, so yeah.

3           MR. ZIEGLER: Okay. And so --

4           MR. DILLEN: I mean, that's why I was sent to  
5 her.

6           MR. ZIEGLER: All right. So when you tell Macnab  
7 that you don't think you're a victim, she takes this  
8 very personally and gets defensive about, you know, her  
9 potentially having facilitated your false story of  
10 abuse, not knowing, of course, that your false story of  
11 abuse was because you were doing a sting operation on  
12 this whole scam. So in her mindset, it makes sense that  
13 she's defensive at that --

14           MS. HABIB: Oh, is that what you got? Because I  
15 wondered why is she so defensive.

16           MR. DILLEN: Right.

17           MS. HABIB: I know about the (inaudible  
18 cross-talk) I didn't get it, yeah.

19           MR. ZIEGLER: So she's interpreting what you're  
20 saying as, "Look, I think you fooled me into being a  
21 victim when I wasn't," right? Is that fair, AJ?

22           MR. DILLEN: That's fair.

23           MR. ZIEGLER: Okay.

24           MR. DILLEN: That's what I got out of it. I  
25 mean, she went out of her way to do all these things and

1 get all this financial stuff for this to be paid for  
2 through the insurance, so she's mad because I fooled her  
3 into believing that I was a victim.

4 MR. ZIEGLER: And, of course, you know, she's  
5 being, in her mind, attacked. So she doesn't want to  
6 believe that you really weren't a victim, so she comes  
7 up with this explanation that, well, you're saying that  
8 you're not a victim or doubting you're a victim is  
9 actually a sign that you are a victim, correct?

10 MR. DILLEN: Correct. That's correct.

11 MR. ZIEGLER: All right. And what was your  
12 reaction to that?

13 MR. DILLEN: You can't win. You can't win.  
14 You're going to be a victim whether you really are or  
15 whether you really aren't. And I was just stunned that  
16 that is how she saw it, you know?

17 MS. HABIB: You're in the system now.

18 MR. DILLEN: Instead of being, like, "Why did you  
19 fool me? Get out of my office." Like, this matters to  
20 people, you know? Like, there's really abuse victims  
21 and you're sitting (inaudible) a mockery of it, or  
22 whatever. But I'm like no, in my eyes -- I mean, in a  
23 sense that's what happened, but in another sense, I'm  
24 trying to learn something from this experience as well  
25 of how it's handled and, you know, we should be able to

1 know who is a victim and who isn't.

2 MR. ZIEGLER: But it really does illustrate how  
3 this is a no-win game for -- or a no-lose game is  
4 probably the better way to look at it, from the  
5 standpoint of accusing somebody. Because no matter what  
6 you say, you are deemed to be a legitimate victim.

7 MR. DILLEN: Right.

8 MR. ZIEGLER: Even when you say you're not.

9 MR. DILLEN: Correct.

10 MR. ZIEGLER: Having your own doubts about it is  
11 actually evidence that you are a victim. I mean, that  
12 is as circular an argument as you can possibly come up  
13 with, but it's also one that fits her world view and her  
14 self-interest, because she doesn't want to believe that,  
15 in this case, that she facilitated a false story of  
16 abuse.

17 And we've already heard she has at least some  
18 concern or skepticism about her own client, Matt  
19 Sandusky.

20 MR. DILLEN: Right.

21 MR. ZIEGLER: And so this all fits with her own  
22 self-interest. And I thought it was a very --

23 MR. DILLEN: This was a small piece but I do want  
24 to point this out, about her comment in regards to Matt  
25 Sandusky. Bringing his name up at all is an ethical

1 violation that could get her canned, so it's weird that  
2 she would use -- like, she would even mention his name  
3 at all in this entire ordeal.

4 MS. HABIB: But you did, you mentioned his name.  
5 You brought him up.

6 MR. DILLEN: Yeah, I mentioned his name but,  
7 like, she could have said, "Well, I can't talk about  
8 anybody who is or isn't my client," you know what I  
9 mean?

10 MR. ZIEGLER: That's a good point, actually. I  
11 was surprised that she used his name or -- on her own  
12 and was so specific about it. I mean, she -- and to  
13 express open skepticism about his story was also pretty  
14 remarkable as well.

15 And to be clear with her, because since we  
16 haven't -- we did it with Shubin and with Ira Lubert,  
17 you had your phone out there in the open, right? I  
18 mean, there was no ambiguity about this situation with  
19 regard to the taping of your sessions. Is that true?

20 MR. DILLEN: That's true.

21 MR. ZIEGLER: So she had every reason to believe  
22 that you were recording this?

23 MR. DILLEN: Yes.

24 MR. ZIEGLER: Okay. So, that was the final  
25 session you had with her, right?

1           MR. DILLEN: I think that was the second to final  
2 session I had with her. Yeah, I think -- yeah, it might  
3 have been the final session. I'll look at the date on  
4 the thing.

5           MS. HABIB: That makes more sense to me.

6           MR. ZIEGLER: Okay, so --

7           MR. DILLEN: Because I have them arranged by  
8 dates. But yeah, it was probably the final session I  
9 had with her, because I'm telling her, like, "Hey, I  
10 don't believe I'm a victim." And it's right before the  
11 Newsweek story.

12          MS. HABIB: If she knows -- if she knows he's  
13 taping, it makes more sense to me that she was firm  
14 about "I didn't suggest anything."

15          MR. ZIEGLER: True. I mean, all -- but you have  
16 to remember, they've been together around 100 times.  
17 She may have become so desensitized to the phone being  
18 out there that she might not have even been thinking  
19 that I'm being recorded that time --

20          MS. HABIB: Oh, that's true.

21          MR. ZIEGLER: -- even though at the beginning,  
22 it's my understanding that AJ made that very clear, that  
23 he was recording. So, I don't know. I wasn't there,  
24 and we're going -- you know, AJ, is that a fair  
25 assessment based upon your experience with this?

1           MR. DILLEN: Yeah, yeah. I mean, the phone was  
2 out. She -- because I had asked her from the beginning,  
3 and it was all okay, and so I just continued to do so.

4           MR. ZIEGLER: All right, so as part of the  
5 preparation for the Newsweek article, you end your  
6 therapy sessions and you also have a final meeting with  
7 Shubin where, you know, it becomes clear that you're not  
8 going to pursue a civil claim against Penn State.

9           But Shubin's reaction to this -- and again, this  
10 is all part of you shutting this down because we're  
11 preparing for "Newsweek," I cannot emphasize that  
12 enough.

13           MR. DILLEN: Right.

14           MR. ZIEGLER: Shubin actually suggests to you,  
15 while ending his representation of you, that you pursue  
16 a criminal complaint against Jerry Sandusky. This is,  
17 obviously, years later. The letter I'm about to read of  
18 his from February 15th, 2018, this is years after his  
19 2012 conviction, and Shubin is suggesting to you and  
20 manifesting and facilitating your potential criminal  
21 complaint against Jerry Sandusky. And what is the  
22 strategy behind that with regard to you potentially  
23 filing a criminal complaint against Jerry Sandusky?

24           MR. DILLEN: Well, as we discussed earlier, the  
25 statute of limitations on a civil claim ends at 30 in

1 Pennsylvania; however, Shubin educated me that at 50,  
2 you have 'til you're age of 50 to make a criminal  
3 complaint.

4 So because the statute of limitations ran on the  
5 civil, his strategy is if I make a criminal complaint,  
6 which means I'd have to report to the police or the  
7 attorney general or whoever, then me bringing about a  
8 claim then would follow the statute of limitations on  
9 criminal, thus maybe pressuring Penn State into paying  
10 me anyway.

11 MR. ZIEGLER: So this is key. So, in other  
12 words, Shubin is determined, you know what, "I can't  
13 help you get any money from Penn State because of the  
14 statute of limitations on civil cases, but if you file a  
15 criminal complaint, then you might be able to get some  
16 money, because Penn State would feel at least some  
17 semblance of pressure," right?

18 MR. DILLEN: Right.

19 MR. ZIEGLER: Okay. Now, and this is important  
20 to how these loose ends get tied up here in preparation  
21 for the Newsweek situation which, unfortunately, ends up  
22 blowing up at the last moment, but Shubin, and this is  
23 bizarre to me, sends you a letter about this situation,  
24 confirming in very clear detail what he's doing here  
25 with regard to you and a criminal complaint against

1 Jerry Sandusky. Here's the letter to you.

2 He writes, "As we discussed, any civil claim that  
3 you have is beyond the statute of limitations, which in  
4 Pennsylvania expires at age 30 in child sex abuse  
5 claims.

6 "As a result, I've made the difficult decision  
7 not to accept representation of your potential civil  
8 claim against Penn State, Jerry Sandusky, or others.

9 "I am grateful for all that you've shared with me  
10 and acknowledge that doing so was not easy. I am also  
11 supportive of your decision to reach out to the police  
12 to discuss what occurred to you. The statute of  
13 limitations on the criminal side has not yet run. To  
14 that end, I have spoken with Deputy Attorney General  
15 Laura Ditka."

16 Now, Laura Ditka was the woman who prosecuted  
17 Graham Spanier, by the way.

18 MR. DILLEN: Right.

19 MR. ZIEGLER: She's also the niece of Mike Ditka,  
20 and she's also passed away recently.

21 MR. DILLEN: Right.

22 MR. ZIEGLER: "Laura Ditka..." who has a role in  
23 overseeing child sex abuse cases in that office, she  
24 "...advised me that she would reach out to Trooper  
25 Sassano," that's Anthony Sassano, the main detective in

1 the Sandusky case, "...to let him know to expect to hear  
2 from you. I provided you his contact information," via  
3 a February 15th, 2018 e-mail that he sent to AJ  
4 directly.

5 "Thank you again for giving me an opportunity to  
6 review your claim and sharing your story with me. I  
7 wish you the best in your contacts with the State  
8 Police. Trooper Sassano has a great deal of experience  
9 communicating with Sandusky and other child sex abuse  
10 victims. I am confident he will treat you with dignity  
11 and professionalism."

12 Now that, to me, was very significant on a bunch  
13 of fronts. For one, obviously, it means for 100 percent  
14 that Shubin believes the claim because he's telling you  
15 to go ahead and make this criminal complaint against  
16 Jerry Sandusky.

17 By the way, he's portraying it as your idea, but  
18 that wasn't your idea, was it, AJ?

19 MR. DILLEN: No.

20 MR. ZIEGLER: Whose idea was it?

21 MR. DILLEN: It was Andrew Shubin's.

22 MR. ZIEGLER: But he's claiming in this letter  
23 that it was your idea?

24 MR. DILLEN: Right.

25 MR. ZIEGLER: And there was another e-mail that

1 he references in that letter to you, giving you Anthony  
2 Sassano's contact information, right?

3 MR. DILLEN: Right.

4 MR. ZIEGLER: To me, the significance of this  
5 was, wow, one, he really believes you. Two, the  
6 connection to the Attorney General's Office -- I mean,  
7 he's basically now doing for the Attorney General's  
8 Office what he does for Ross Feller Casey.

9 MR. DILLEN: Correct.

10 MR. ZIEGLER: I mean, here he is, he's feeding  
11 the Attorney General's Office in what feels like  
12 collusion, right? I mean --

13 MS. HABIB: Is that what you think of this?

14 MR. ZIEGLER: AJ, isn't that how you interpreted  
15 it?

16 MR. DILLEN: Yeah, yeah. I mean, he's definitely  
17 in that sense of, when you start looking at these  
18 indirect connections, yeah, he's definitely colluding  
19 with them, because he's presenting me as this, as -- to  
20 them, like, why would you do that if you've doubted my  
21 story at all? He wouldn't.

22 MR. ZIEGLER: But also, I mean, think about the  
23 willingness all these years later, because there's not  
24 going to be another criminal case. There's no criminal  
25 case against Jerry Sandusky. He's in prison for the

1 rest of his life, so...

2 MR. DILLEN: Right, and he says that.

3 MR. ZIEGLER: And so clearly, these -- you know,  
4 Ditka and Sassano are effectively willing to act as --  
5 and I don't know how conscious they are of this -- but  
6 they're willing to act as vehicles for pressure against  
7 Penn State in a money grab.

8 MR. DILLEN: Yeah.

9 MR. ZIEGLER: I mean, because there's no criminal  
10 -- there is no criminal case. And so to me, I found  
11 it -- I don't want to overplay it -- but I found it  
12 significant. Again, one, Shubin clearly believes him,  
13 he's willing -- this is how far they're willing to go to  
14 try to milk money out of Penn State. And once again, I  
15 go back to the "Everyone thinks someone else is vetting  
16 them."

17 Once AJ goes to Sassano, if he were to do this,  
18 and to Ditka, he's already got the stamp of approval  
19 because he's been --

20 MR. DILLEN: Right.

21 MR. ZIEGLER: He's gone through the Shubin  
22 factory and the Cynthia Macnab factory, and they've  
23 already -- that factory has already produced at least  
24 nine other Sandusky accusers.

25 So, Liz, you don't see that?

1 MS. HABIB: No, because at this point, everyone's  
2 been paid out, the trial's over, everything, so I don't  
3 understand what the point of going back to them is. Is  
4 it -- I don't understand it at all.

5 MR. ZIEGLER: No, the point is if there's a  
6 criminal complaint, in theory, and that makes some  
7 publicity, because there would be publicity surrounding  
8 that, Penn State may have an incentive to make that go  
9 away and may pay some money.

10 MS. HABIB: Oh, pay off, bad publicity.

11 MR. ZIEGLER: Right. So --

12 MR. DILLEN: Right.

13 MS. HABIB: Because that is Penn State's motive,  
14 we think, right?

15 MR. ZIEGLER: Right.

16 MS. HABIB: Like, avoid -- get this out of the  
17 way as fast as you can, pay everybody off, move on.

18 MR. ZIEGLER: Right. But if --

19 MS. HABIB: Okay, so it's to manufacture some bad  
20 publicity.

21 MR. ZIEGLER: Right, so that Penn State might  
22 say, "Okay, go away."

23 MS. HABIB: There's another complaint that makes  
24 it to the news --

25 MR. ZIEGLER: You know, like Ira Lubert's going

1 to say, okay, I want -- and I'm just -- you know, this  
2 is too much of a pain in the ass, --

3 MS. HABIB: Okay.

4 MR. ZIEGLER: -- here's \$250,000, go away.

5 MS. HABIB: Right.

6 MR. DILLEN: Right.

7 MR. ZIEGLER: I mean, that was the plan. Now --

8 MS. HABIB: That's what you thought, AJ? Okay.

9 MR. DILLEN: Right.

10 MR. ZIEGLER: To be clear, that was never pursued  
11 because, one, of concerns about legality, and two,  
12 because we were shutting this down because we thought  
13 the Newsweek article was going to happen at any moment.

14 MS. HABIB: Yeah, so and I'm happy to hear you  
15 didn't do anything illegal.

16 MR. DILLEN: That's exactly what we were doing.

17 MR. ZIEGLER: All right. So, unfortunately,  
18 Newsweek bails at the last minute, and we're left with  
19 this amazing story, with all this audiotape, all this  
20 documentation, e-mails, letters from Shubin, you know,  
21 insurance company records, and we've got the whole thing  
22 nailed, and nowhere to go with it, until this podcast.

23 And, AJ, you know, this has been quite a ride.  
24 You know, I mean, from a personal standpoint, what has  
25 this been like for you going through all this?

1           MR. DILLEN: If I could put it in one word,  
2 torture, mental torture, disappointment, sad that, you  
3 know, this could happen. And it's also been an  
4 educational experience, to learn that this is how easy  
5 it is to make a claim and destroy somebody's life over  
6 alleged sex crimes.

7           MR. ZIEGLER: And, AJ, when we began this part of  
8 the process back in late 2014, I expected that we would  
9 find out that this was a load of crap and that this was  
10 very easy to fool these people into thinking that  
11 someone was a victim of Jerry Sandusky, but in my  
12 perception, this turned out to be even more ridiculous  
13 of a process than I expected, and it was far easier even  
14 than I anticipated, even with all the missteps that  
15 you've acknowledged having done.

16           MR. DILLEN: Correct.

17           MR. ZIEGLER: Would you agree that this was, this  
18 process, was way more corrupted and way easier to fool  
19 than either of us ever anticipated?

20           MR. DILLEN: I absolutely agree with that. In  
21 fact, I thought that very, very early on. I was like,  
22 Wow, once Shubin bought my story, and then once he  
23 changed my story, I was like, "Wow."

24           MR. ZIEGLER: Well, AJ, you know, you and I have  
25 had a lot of battles over the years. I've screamed at

1 you more than I've screamed at my kids or my wife during  
2 this time period, and you've driven me crazy numerous  
3 times, but I do really appreciate the sacrifice that  
4 you've made, and you've never wavered. My gosh, you  
5 have never wavered in your dedication to this cause and  
6 have been more willing to put your everything on the  
7 line than anyone else has, and so you deserve a lot of  
8 credit for that.

9                 So great job in not giving up, even when everyone  
10 else, including myself, was more than willing to give  
11 up. And so I do really appreciate that, and you have  
12 created a remarkable record of what really did happen  
13 here.

14                 MR. DILLEN: Well, thank you, John. And, you  
15 know, as you said early on, I guess, you know, you're  
16 not friends with John Ziegler unless you know you've had  
17 a few battles and made it across the river, so to speak,  
18 you know? But you're a good person, you know, and your  
19 research is impeccable in that regard. That's one thing  
20 I do respect about you, your research is top notch, and  
21 you don't give up yourself.

22                 MR. ZIEGLER: Well, I do have to say that your  
23 ability to withstand my blowups is probably better than  
24 almost anyone else's I've encountered, but it actually  
25 has probably facilitated more blowups in your direction

1 because I know you can take it. But you do drive me  
2 crazy, AJ, you do, you drive me absolutely nuts. But I  
3 understand why, and I appreciate everything that you've  
4 done, and you deserve a heck of a lot of credit.

5 MS. HABIB: You do, AJ. Thanks for that work.

6 MR. DILLEN: Oh, absolutely.

7 MR. ZIEGLER: Liz, anything else you want to ask  
8 him?

9 MS. HABIB: I would just say, when I listen to  
10 everything you guys have done and I watch you break it  
11 apart, that I don't know -- you put it this way: that  
12 it was easy to fool them. I don't know if you fooled  
13 them or they easily accepted it because they want to  
14 fool themselves into believing that money is more  
15 important than people. And I mean that on every single  
16 level of this story, so...

17 MR. DILLEN: That's a better way of putting it,  
18 Liz. I agree, I agree, they want -- that's exactly what  
19 pretty much happened there and how things progressed.  
20 Sorry.

21 MS. HABIB: Yeah, no, don't be sorry. It really  
22 is a lot. It's -- you really put yourself at risk in  
23 doing this, so thanks for your work.

24 MR. DILLEN: You're welcome.

25 MR. ZIEGLER: AJ, well done. I'm sure we'll talk

1 to you again sometime soon. And thanks again for all  
2 you've done and all your time.

3 MR. DILLEN: Absolutely. Thanks, John, and  
4 thanks for your patience with me.

5 (Mr. Dillen exists the podcast.)

6 MS. HABIB: John, it's just -- it is really  
7 incredible what he was able to do and get -- and the  
8 amount of time that he spent on the thing.

9 MR. ZIEGLER: Yeah, his commitment, as I  
10 mentioned there, has been utterly extraordinary. It's  
11 been difficult to deal with. I mean, he and I have gone  
12 through this traumatic experience together. I probably  
13 have at least 2,000 messages on my texts, from texting  
14 and Facebook from him over the last five or six years,  
15 and we've had hours and hours of phone conversations.

16 It oftentimes gets contentious because, you know,  
17 clearly AJ looks at the world differently than most  
18 people; I clearly look at the world differently than  
19 most people.

20 MS. HABIB: Yeah, there's some similarity between  
21 you guys, like it or not.

22 MR. ZIEGLER: Well -- okay.

23 MS. HABIB: I mean, anyone who would be so dogged  
24 on something like this, for what? I mean, you're the  
25 journalist. What's his motivation? He knew the guy, he

1 knows --

2 MR. ZIEGLER: He knew that there was an  
3 injustice, and he knew that he was in a unique position  
4 to try to correct it, which is similar to my situation.  
5 But he, you know, he pulled this off. Unfortunately, at  
6 least to this moment, there hasn't been any payoff.

7 MS. HABIB: No one knows.

8 MR. ZIEGLER: Because -- well, we, let me be  
9 clear, we've been holding this back for the right  
10 opportunity. We thought Newsweek was going to be that  
11 opportunity and then that blew up, and so now this  
12 podcast has come along, so now this is the chance to  
13 tell this full story.

14 And to me, even if we didn't have the mountain of  
15 other evidence that we've already gone through, this  
16 would, at the very least, cause people to go, "Whoa,  
17 whoa, whoa, whoa, whoa, wait a minute. This is the key  
18 lawyer and the key therapist being easily duped by an  
19 obviously fake accuser, with a ridiculous story, with no  
20 vetting, where he gave them multiple opportunities to  
21 realize that he was a fake accuser, and they didn't have  
22 any clue about it, then they recommended him to the  
23 State Attorney General's Office for a criminal  
24 complaint." And so to me, this ought to --

25 And by the way, the great mistake we made --

1       although it was probably fatal anyway because Bob Roe  
2       lost his job and, therefore, we didn't have a champion  
3       within Newsweek, and I urged this and we'll get into  
4       this in later episodes -- but the big mistake we made  
5       with Newsweek was we bit off way too much. We should  
6       have focused the Newsweek piece on just the settlement  
7       documents and the fake accuser story. That should have  
8       been all we did.

9               And I urged Ralph Cipriano, and I believe I did  
10      the same with Bob Roe -- Ralph was the co-writer on this  
11      and the person who was initially commissioned by  
12      Newsweek to do the story -- I said we've got to narrow  
13      this because we're asking them to take down Moby Dick  
14      and, I mean, we should just -- we should try to shrink  
15      the size of the fish here.

16               And if we had done this just on the settlements,  
17      which was our last episode and this episode, I think we  
18      would have had a better shot at it, because it's so  
19      obvious that it's ridiculous and it would have opened  
20      people's minds to the larger picture. Because if you --

21               MS. HABIB: Would it have? Would it? Will this  
22      open people's minds to the larger picture?

23               MR. ZIEGLER: I don't -- I think --

24               MS. HABIB: I mean, yeah, I think it opens my  
25      mind, certainly in this, to, "Okay, all the victims

1 outside of the trial victims are questionable," right?  
2 Because Penn State just wrote checks instead of really  
3 taking --

4 MR. ZIEGLER: But, of course, obviously, they  
5 were a big part of the settlements, too. I mean, they  
6 got huge amounts of money, the trial victims did, so --  
7 and we know from the settlements that at least two of  
8 those accusers, number three and number five, totally  
9 changed their stories to get money. One of those was a  
10 Shubin client, victim number three, J. S.

11 So it's all connected, and that was really part  
12 of the problem, was that Bob Roe and Ralph Cipriano, in  
13 my recollection, they wanted to go for the whole thing  
14 because they felt like, well, where do you stop? And --

15 MS. HABIB: But it is so, "Where do you stop?"

16 MR. ZIEGLER: I mean, because it is all connected  
17 and --

18 MS. HABIB: You could have started chipping at  
19 it. I mean, you still are chipping at it. You could  
20 have started chipping at it.

21 MR. ZIEGLER: Well, we made a mistake and,  
22 unfortunately, as it happened --

23 MS. HABIB: I don't know that you did.

24 MR. ZIEGLER: Well, it's happened many times in  
25 this case. It's almost like we're cursed, where every

1 opportunity we have to make some headway, fate steps in  
2 in this perfect storm and blows it up.

3           But hopefully, now people understand the full  
4 significance of the fake accuser story. One person who  
5 does not -- and this was so classic. So when the  
6 Newsweek thing blew up, I put out my version -- or Ralph  
7 and my version of what the Newsweek story was going to  
8 be.

9           I put it on our website, which at that time was  
10 framingpaterno.com, and so that was -- that revealed the  
11 existence of this fake accuser. And, you know, there's  
12 a ton of stuff in there that's new information with  
13 documentation, but we held back AJ's name and we held  
14 back the audio clips and, you know, we held back 90  
15 percent of the story.

16           But we put in there that, yes, there's this fake  
17 accuser and basically here's what happened, and what  
18 does Scott Paterno take away from this? This is so  
19 classic. Scott Paterno, his only takeaway from the fake  
20 accuser story, and he said this publicly on Twitter, his  
21 takeaway was, "Boy, that fake accuser has got a problem,  
22 because he stole money from Penn State via the insurance  
23 company that paid for his therapy." That was --

24           MS. HABIB: Oh, my goodness.

25           MR. ZIEGLER: That was Scott Paterno's takeaway.

1 He was concerned, quote unquote, he was concerned  
2 trolling over the fact that the fake accuser had  
3 committed insurance fraud.

4 MS. HABIB: Well, okay, I said you guys didn't  
5 commit any crime. I mean, is that -- I mean, it's an  
6 interesting point. Okay, that's a separate story. I  
7 get it now, John, I get it.

8 MR. ZIEGLER: Liz, Liz, Liz, Liz, no, no, Liz,  
9 Liz, Liz, Liz, Liz --

10 MS. HABIB: But look, this is so backward, this  
11 story, John. All right, can I take it back to one  
12 thing? (Inaudible.)

13 MR. ZIEGLER: No, I can't. I cannot let you get  
14 away with that. That --

15 MS. HABIB: I can't, John, because everything  
16 about this story is weird like this.

17 MR. ZIEGLER: Okay.

18 MS. HABIB: Watch it happen. Watch it happen.

19 MR. ZIEGLER: No, BUT, Liz, this idea -- the idea  
20 that that's Scott Paterno's takeaway --

21 MS. HABIB: That part, it just, like, made me  
22 roll my eyes, believe me.

23 MR. ZIEGLER: Okay.

24 MS. HABIB: And then the next thing that came up,  
25 after I rolled my eyes, I went, "Oh, my God, you

1 could -- you're going to get in trouble. They'll get in  
2 in trouble for this."

3 MR. ZIEGLER: No, bring it on, you know? That's  
4 fine.

5 MS. HABIB: John --

6 MR. ZIEGLER: But here's the important part:  
7 Scott is so invested in his narrative --

8 MS. HABIB: I get the important part.

9 MR. ZIEGLER: -- that here he has evidence that  
10 -- and let's be clear, if Andrew Shubin got duped by  
11 this fake accuser, then why couldn't he have been duped  
12 by the three trial accusers, plus A[REDACTED] M[REDACTED], the "Mike  
13 McQueary victim," who didn't testify at trial but got  
14 paid \$6.9 million by Penn State?

15 And that's the whole case against Joe Paterno,  
16 yet Scott doesn't see it that way because he doesn't  
17 want to see it that way. And so --

18 MS. HABIB: No, I know. But the other thing that  
19 is just so clear is why, why did Penn State not allow a  
20 civil case to go forward? You could defend a civil  
21 case.

22 MR. ZIEGLER: Because of the publicity. They  
23 didn't -- they wanted the bad --

24 MS. HABIB: The publicity? They didn't want to  
25 ever look at this and say maybe none of this is real?

1 There were clearly people, we've talked to many of them,  
2 that had it gone and had it gone to court with a good  
3 attorney in a civil case, maybe it would have been  
4 revealed.

5 MR. ZIEGLER: But, Liz, the people making the  
6 decisions are as invested as Scott Paterno, because  
7 they're the ones that fired Joe Paterno and fired Graham  
8 Spanier and destroyed the university and had the  
9 football program almost destroyed by the NCAA --

10 MS. HABIB: Right, forgive me, forgive me.  
11 Forgive me, I'm just -- I'm not that complicated, right?  
12 I'm a simple person. I keep thinking of right in front  
13 of me and then you build me the big picture, and I'm  
14 like, yeah, that's right.

15 MR. ZIEGLER: No, no, no. The big picture is the  
16 people that are in charge, like Scott, Ira Lubert, the  
17 Board itself, they're deeply, deeply invested in not  
18 having been wrong, because if they're wrong on this, if  
19 they put all their chips down on the wrong side here,  
20 they are damned for all time.

21 And so like Cynthia Macnab, who can't even  
22 comprehend the idea that she might have manipulated  
23 someone into thinking they were a victim when they  
24 weren't, no one is even considering that possibility.  
25 And so Scott Paterno looks at this story and goes, "Wow,

1       that looks like insurance fraud." Wait a minute.

2           MS. HABIB: Well, I forgot myself for a moment  
3 what I'm dealing in, okay? I forgot myself for a  
4 moment.

5           MR. ZIEGLER: I get it. So anyway, so the  
6 essence of the AJ Dillen story is that one guy had the  
7 guts and the perseverance to expose the corruption in  
8 the system. And I don't know, when I say "corruption,"  
9 I still, to this day, don't know to what level these  
10 people knew they were engaging in corruption.

11           I'm a big believer -- I'm an anti-conspiracy  
12 person. I'm a big believer in people pursuing their own  
13 self-interests. I'm a big believer in people convincing  
14 themselves of a truth that they want to believe because  
15 it's in their own self-interest to believe it, like  
16 Macnab, like Shubin.

17           I mean, at times, Shubin sounds like a guy who  
18 really believes Jerry Sandusky is guilty and, therefore,  
19 -- and this is my belief about Shubin. I just think he  
20 believes that the ends justify the means. He --

21           MS. HABIB: I think that we get that -- we  
22 started on that block with the prosecutors.

23           MR. ZIEGLER: Right, right, the ends justify the  
24 means. We have a conclusion that Jerry Sandusky is a  
25 pedophile, that these victims were abused, they deserve

1 justice. It doesn't matter what I have to do to get  
2 that justice because I'm on the side of right.

3 So if I have to lie, if I have to tell these  
4 victims what the right story is so they'll get the most  
5 money, that doesn't matter, because I'm fighting the  
6 man. That's what Shubin thinks. And I think AJ agrees  
7 with this, that Shubin believes this to a certain  
8 degree.

9 Now, he's got some suspicions about it, which is  
10 why, you know, he's worried about me and warning AJ and  
11 his mom about me and that kind of thing. But by and  
12 large, I think he probably believes that at least some  
13 of this is real, and Macnab believes everybody's abused  
14 who says that they're abused because that's the way  
15 therapists are trained.

16 MS. HABIB: That's the way therapists are.

17 MR. ZIEGLER: So, anyway, I hope people, you  
18 know, fully absorb the magnitude of the AJ Dillen sting  
19 story. It's been the result of an enormous amount of  
20 work on his part, an enormous amount of aggravation on  
21 my part.

22 And I let this thing happen almost entirely  
23 organically, one, because I was a little concerned  
24 about, okay, what's the legality of this? But most  
25 importantly, I was concerned about making sure that this

1 was as natural as it could be. I didn't want, you know,  
2 other than a couple of things, like getting Jerry  
3 Sandusky to write a letter which AJ then blew in front  
4 of Andrew Shubin. I mean, how Shubin --

5 To me, when I'm hearing that Shubin clip, I can  
6 hear Shubin going, "Wait a minute. You don't know  
7 whether or not you got this letter from Jerry recently?"  
8 I mean, he's in prison, obviously.

9 But I tried very hard to not manipulate the  
10 process because I wanted it to be as natural and organic  
11 as possible, because I wanted to see what would happen.  
12 And you, I think you made this point, in a weird way, it  
13 actually worked out in some situations because the  
14 system was so broken that even as badly as AJ did at  
15 times, they still didn't catch him. And the letter is  
16 actually a pretty good example.

17 MS. HABIB: Well, they're not -- no one does this  
18 in a vacuum. No one does this alone. You know, Shubin  
19 has to send it to this, has to send it to that, and then  
20 it's sent to Penn State, and Penn State writes the  
21 check, everybody does it together. There's the next  
22 person in line who can raise suspicion, but it never  
23 happens.

24 MR. ZIEGLER: Well, everyone thinks everyone else  
25 is doing the vetting, right.

1 MS. HABIB: Like you keep saying, keep doing the  
2 vetting or -- or it's just they have a vested interest  
3 in keeping it quiet. Just -- look, it's more important  
4 just that we get this out of here.

5 MR. ZIEGLER: And bottom line on AJ, if this  
6 story was real, if these people were credible, if they  
7 were reliable, if they were trustworthy, if this system  
8 worked, AJ would have been found out on day one.

9 Instead, he wasn't even found out when he tried  
10 to abort three years later, okay? That, to me, is the  
11 most important takeaway of this. If the story we were  
12 told was real, AJ would not have gotten out of the  
13 batter's box, and instead, had he wanted to, he would  
14 have hit a home run. Instead, we bailed on it for the  
15 reasons already given.

16 MS. HABIB: And any true victim, any real, true  
17 victim, I know it's hard to tell a story, but they know  
18 their stories. They'll tell their stories, you know?  
19 People are going to say we're hurting real victims.  
20 We're not hurting real victims.

21 MR. ZIEGLER: AJ is very concerned about real  
22 victims.

23 MS. HABIB: We're helping real victims.

24 MR. ZIEGLER: That's his major motivation here.  
25 And so, anyway, I hope people understand and appreciate

1 the magnitude of AJ's story because it truly is unique,  
2 and I do think it is the final nail in the coffin of the  
3 conventional wisdom of this case.

4 MS. HABIB: What an amazing story and a  
5 courageous one at that.

6 For all of us who looked at the sheer number of  
7 victims as proof that Sandusky was a monster, AJ's story  
8 is an eye-opener.

9 As John pointed out over and over, this case is  
10 about people blindly and ruthlessly chasing after only  
11 what was in their self-interest. Andrew Shubin had no  
12 interest in the truth. As far as he was concerned,  
13 Sandusky was guilty and the opportunity for financial  
14 windfall presented itself. The opportunity was so  
15 large, bending a few rules and twisting a few facts were  
16 small risks well worth taking.

17 This episode was as sad as any we have done.  
18 Andrew Shubin has earned his place in the "With the  
19 Benefit of Hindsight" Hall of Villains, along with other  
20 gems like Mike McQueary, A [REDACTED] M [REDACTED], Don Fisher, Matt  
21 Sandusky, Louis Freeh, Scott Paterno, and so many  
22 others.

23 MR. BENZA: "With the Benefit of Hindsight" is a  
24 Workhouse Connect, John Ziegler production, executive  
25 producer, Mike Agovino, technical producer, Kevin

1 Campbell, our host is Liz Habib. "With the Benefit of  
2 Hindsight" is available on Apple Podcasts, Spotify, or  
3 wherever you get your podcasts. I'm AJ Benza, thanks  
4 for listening.

5 (The podcast terminated at this time.)

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1 C E R T I F I C A T E  
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4 COUNTY OF ARMSTRONG )  
56 I, Heidi Hawk, hereby certify that the  
7 proceedings and evidence taken by me in the  
8 audiotaped matter are indicated in my notes  
9 and that this is a true and correct transcript of  
10 same.11  
12 DATED this day 4th of January, 2023.  
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IN THE COUNTY OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

**COMMONWEALTH** : CP-14-CR-2421-2011  
CP-14-CR-2422-2011

VS ::

GERALD A. SANDUSKY :  ORIGINAL

TRANSCRIPT OF PROCEEDINGS  
(DEFENDANT'S POST CONVICTION RELIEF ACT PETITION  
HEARING)

BEFORE: JOHN M. CLELAND, SENIOR JUDGE  
SPECIALY PRESIDING

DATE: AUGUST 22, 2016

PLACE: CENTRE COUNTY COURTHOUSE  
COURTROOM NO. 1  
102 SOUTH ALLEGHENY STREET  
BELLEFONTE, PA 16823

## **APPEARANCES:**

FOR THE COMMONWEALTH:  
JENNIFER PETERSON, ESQUIRE

FOR THE DEFENDANT:  
ALEXANDER LINDSAY, ESQUIRE  
J. ANDREW SALEMME, ESQUIRE

NOTES BY: JENNIFER AMENTLER  
OFFICIAL COURT REPORTER  
ROOM 101, CENTRE COUNTY COURTHOUSE  
BELLEFONTE, PA 16823  
814 355-6734 OR FAX 814 548-1158

 ORIGINAL

1 Q. Did you forbid Mr. McGettigan and/or Mr. Fina  
2 and/or any of the agents from interviewing Mr. M [REDACTED]  
3 outside of your presence?

4 A. I don't know that I was ever asked to permit  
5 or to -- let me say it this way. I would have  
6 expressed strongly that I believed that I needed to  
7 be present for Mr. M [REDACTED] interview, yes.

8 Q. Why would you --

9 A. But I don't know that I ever said I forbid  
10 you. But I definitely would have said that I want  
11 to be present.

12 Q. Did they take any steps to interview him  
13 outside of your presence?

14 A. I don't know whether -- I don't know what  
15 they did. I'm only aware of the fact that he was  
16 never interviewed and I was never, you know -- he  
17 was never interviewed, let's just leave it at that.

18 Q. Did you at any time make any effort to  
19 secrete the whereabouts of Mr. M [REDACTED] from anyone on  
20 the prosecution team, including the prosecutors  
21 and/or the investigators?

22 A. I'm not going to answer that. That's, in my  
23 view, covered by attorney/client privilege, so I'm  
24 not going to talk to you about conversations or what  
25 my client may have done or where he was. And I have

1 never spoken about that and I'm not at issue, and  
2 I've never waived that privilege. The answer to  
3 that would contain purely privileged information, so  
4 I will not share that with you.

5 Q. Let me ask you this question. Were you ever  
6 asked by any of the investigators on the case or any  
7 of the prosecutors on the case, were you ever asked  
8 where Mr. M█████ was?

9 A. I don't recall being asked that.

10 Q. When did you undertake to represent Mr.  
11 M█████?

12 A. I believe it was in the fall of 2011.

13 Q. Okay. Late fall? November? Can you give us  
14 any more specific dates?

15 A. I believe it was in -- with respect to this  
16 matter?

17 Q. Yes, sir.

18 A. I believe it was in early November. It's  
19 essentially around the time that the grand jury  
20 presentment became public, within a week or two of  
21 that.

22 Q. Had you represented him on anything else?

23 A. Yes.

24 Q. What?

25 A. I represented him in a DUI case.

Curtis Everhart  
*Criminal Defense Investigator*  
Joseph Amendola  
Law Office  
110 Regent Court Suite 202  
State College, PA 16801  
(814)234-6821

Commonwealth of Pennsylvania

-vs-

Gerald A. Sandusky

## INTERVIEW

A [REDACTED] M [REDACTED] (D.O.B. [REDACTED])  
[REDACTED]  
[REDACTED]

Mr. M [REDACTED] was interviewed on November 9, 2011, at the law office of Joseph Amendola. Mr. M [REDACTED] mother, [REDACTED] of [REDACTED] 16826, was present during the entire interview. She can be contacted at [REDACTED].

The initial stages of the interview consisted of discussion of Mr. M [REDACTED] schooling, work history, and other relevant personal history.

M [REDACTED] attended the West Branch School District to include West Branch Elementary School. M [REDACTED] stated while there, he maintained academic levels of A's and B's. M [REDACTED] stated he attended West Branch High School from grades 7 through 12. Similarly, he maintained A' and B's throughout high school with no disciplinary issues. He played high school football junior high, junior varsity, and varsity football. Post high school consisted of attending Penn State University for a summer session in 2005.

He then left Penn State University and enrolled at Lock Haven University at the Clearfield Campus for one-half semester then dropped out of school and enlisted in the U.S. Military. At that point, M [REDACTED] was accepted into the United States Marine Corps, with his basic training held at Parris Island. He completed boot camp and was stationed at Camp Geiger for "SOI" School which is the Marine School of Infantry, for one month. He then received orders for transfer to San Antonio, Texas to attend Marine Corrections Officer training for one month. Upon completion of Corrections Officer Training, M [REDACTED] was again issued transfer orders for Camp Lejeune to be a Marines Corrections Officer at the brig at Camp Lejeune.

Once at this location, M█████ was again reclassified to be a "Cross Country Chaser" which according to M█████ his primary job function was to travel throughout the United States for arrest/apprehension of soldiers who were AWOL. M█████ stated this position as a military prison escort officer. He served in this position for two years. He then received an honorable discharge from the United States Marine Corps.

At that point, the interview was redirected to the who, what, where, when, and how M█████ came into contact with Gerald (Jerry) Sandusky.

JW: L →

M█████ stated his mother, who was referenced earlier in this interview, was involved in a very volatile marriage which at one point resulted in his "father held my mother at gunpoint," as witnessed by him and his brother, D█████ M█████.

While at West Branch High School, the guidance counselor, Mr. Deshong, contacted M█████ and his mother for a private session to discuss family matters. According to M█████, Mr. Deshong spoke with him and his mother about the Second Mile Program located in State College, Pennsylvania. M█████ stated Deshong felt he would benefit from a positive peer atmosphere that would be offered through this program. After some discussion, both M█████ and his mother felt this would be an excellent opportunity, and it was agreed he would attend. M█████ indicated that Mr. Deshong assisted with the necessary application as well as making the referral as per Second Mile regulations.

The next portion of the interview dealt with M█████ initial arrival at the Second Mile Summer Camp and subsequent years which resulted in his friendship with Jerry.

According to M█████ his first summer camp was a great deal of fun, and he came away with a very positive impression. The first year he observed Jerry, but really did not know him other than a casual "hello" and observing Jerry's role in the program. According to M█████ the second summer was the start of "a great friendship" with Jerry and a more one-on-one type setting. M█████ stated as time progressed, Jerry became a "father figure" with numerous "positive events in his life". The initial friendship resulted in M█████ being invited to the Sandusky home for meals and meeting with Jerry's children and wife, Dottie.

The friendship went further to include M█████ being invited to attend PSU home games and tailgate with the Sandusky family. M█████ described that further into the friendship, Jerry would invite him to travel with him to Cleveland Browns games and Philadelphia Eagles games both at their home stadiums. M█████ described these trips as very enjoyable and lots of fun. A trip to Cleveland included M█████, Jerry, Harry M█████, and Frankie Prebst from the Lock Haven area.

The interview then began to focus on specific questions regarding Jerry's conduct while with M█████ I asked the specific question: "Did Jerry ever touch you in a manner that you felt to be improper, or caused you to feel concern about his

invading your personal space?" M\_\_\_\_\_ answered with a very pronounced "Never, ever, did anything like that occur."

I again asked a direct question: "Did Jerry ever touch you in any way?" M\_\_\_\_\_ responded that "when we would travel, Jerry would gesture with his left hand during conversations. He would place his right hand on my left knee. Jerry was a very vocal, animated talker on trips in his vehicle. M\_\_\_\_\_ stated this conduct by Jerry was not offensive to him. "I never felt violated nor would Jerry ever attempt to move his right hand to any other area of my body other than my left knee."

M\_\_\_\_\_ stated, "Never in my life while with Jerry did I ever uncomfortable or violated. I think of Jerry as the Father I never had." At this point, M\_\_\_\_\_ said he "needed to explain just how much Jerry helped me in my life."

M\_\_\_\_\_ stated that on Senior Night at a West Branch High School football game, "I asked Jerry to walk onto the field with my mother. It was announced on the loudspeaker 'Father Jerry Sandusky' along with my mother's name."

"I invited Jerry and Dottie to my wedding. Why would I ask Jerry my father figure at senior night, ask Jerry and Dottie to be at my wedding, and the school asked me to ask Jerry to speak at my graduation, which he did, if there was a problem?" M\_\_\_\_\_ also stated, "Why would I travel to games, go to his house, and make all the trips if Jerry had assaulted me? If that had happened, I would want to be as far away from him as possible." M\_\_\_\_\_ stated, "I actually quit the Second Mile in the 6<sup>th</sup> grade yet Jerry remained in my life from that point through today. Never did Jerry do wrong by me."

NOTE: M\_\_\_\_\_ stated he would prepare and type as complete a listing as possible of all the trips on which he accompanied Jerry as well as who also attended, and will provide this investigator with a copy.

I then continued with questions regarding specific times when Jerry and M\_\_\_\_\_ interacted.

M\_\_\_\_\_ went on to describe the following issues:

M\_\_\_\_\_ stated he enrolled at the PSU Main Campus and would be at Jerry's home for visits and family events. "I often would stay at Jerry's home overnight. Jerry never violated me while I was at his home or anywhere else. On many occasions there were numerous people at his home. I felt very safe and at ease at his home whether alone with Jerry or with others present."

At this point I went into very specific questions regarding M\_\_\_\_\_ and Jerry at the PSU complex.

M\_\_\_\_\_ described this area as follows:

"I would work out at the football training complex when I played high school football at West Branch for the years 2000, 2001, and 2002. After 2002, Jerry and I would work out at a gym at another location in State College near the Blue/White Golf Course.

22  
LS

I asked M\_\_\_\_\_ about a specific time period in 2002 when he would work out with Jerry. M\_\_\_\_\_ stated it would have been the night that was described as alleged Victim Number Two (2) in the grand jury report. The day was March 1, 2002, I am very positive." To assure M\_\_\_\_\_ was correct, I asked him to read alleged Victim Two (2) findings by the grand jury. M\_\_\_\_\_ again said, "I am alleged Victim Number Two (2)." (A copy of the complete grand jury findings of fact is attached to this letter.)

M\_\_\_\_\_ stated he and Jerry had just finished a workout and went into the shower area to shower and leave. "I would usually work out one or two days a week, but this particular night is very clear in my mind. We were in the shower and Jerry and I were slapping towels at each other trying to sting each other. I would slap the walls and would slide on the shower floor, which I am sure you could have heard from the wooden locker area. While we were engaged in fun as I described, I heard the sound of a wooden locker close, a sound I have heard before. I never saw who closed the locker. The grand jury report says Coach McQueary said he observed Jerry and I engaged in sexual activity. This is not the truth and McQueary is not telling the truth. Nothing occurred that night in the shower."

I then showed M\_\_\_\_\_ two (2) pictures of Coach McQueary. M\_\_\_\_\_ said, "I know who Coach McQueary is and both pictures are McQueary," (I have attached both pictures to this statement.)

I asked, "How do you know this was the night McQueary described?" M\_\_\_\_\_ stated, "I heard the wooden locker close. McQueary said he went to the locker room to obtain items from a locker. I know what the door sounds like when it is closed, as I said before. I never saw McQueary look into the shower that night. I am sure." I asked M\_\_\_\_\_, "Can you be more specific if possible?" M\_\_\_\_\_ said, "That same week Jerry either told me in person or on the phone that the night we were in the showers, Coach McQueary reported that he saw us engaged in sexual acts and reported this to school officials. Jerry told me to expect a call from PSU officials about that night. To be more specific, the last night that Jerry and I showered at the PSU Complex was March 1, 2002, I am certain."

I asked M\_\_\_\_\_, "Did PSU officials ever contact you?" M\_\_\_\_\_ said, "Never. The next contact I had was when PSP troopers interviewed me regarding the Sandusky case." M\_\_\_\_\_ again stated, "At no time that night, March 1, 2002, did Jerry sexually assault me with anal or oral intercourse, nor did I perform such on Jerry. This is wrong not to tell the truth, and McQueary did not tell the truth." M\_\_\_\_\_ said again, "I am alleged Victim Number Two (2) on the grand jury report as the events

described match that night in exact details except that Jerry never sexually assaulted me. I would be very sure if something like that happened and I would have called the police. What McQueary said he observed is wrong. I can't understand why this was said. It is not the truth."

I then asked M [REDACTED], "describe the last time you were actually questioned on this matter." M [REDACTED] explained, "It began with members of the PSP from Rockview who interviewed me outside the Courthouse in Bellefonte. I told PSP that nothing ever occurred with us. I was never sexually assaulted by Jerry at the PSU Complex or any other place in my life. The PSP did not know I was Victim Number Two (2), since the grand jury report describing alleged Victim Number Two (2) had not yet been released." M [REDACTED] again interjected that the night in question was definitely March 1, 2002.

M [REDACTED] described, "I told PSP about numerous trips I would take with Jerry and nothing ever happened except Jerry putting his right hand on my left knee. I described that I would stay at Jerry's home, sometimes have meals, sometimes stay overnight. I would shower separate from Jerry at his home. I felt very uncomfortable with the PSP interview process as they would try to put words in my mouth, take my statement out of context. The PSP investigators were clearly angry and upset when I would not say what they wanted to hear. My final words to the PSP were "I will never have anything bad to say about Jerry."

The final portion of the interview consisted of the following:

I asked M [REDACTED] if what he had to say to me was true and correct to the best of his knowledge and belief," and he said, "Yes." I questioned him whether he wanted to change what was said and again, M [REDACTED] said, "No." I asked M [REDACTED] did he give this statement to me by his own free will and accord with no promise or threats by myself, Attorney Joseph Amendola, and /or any Sandusky family member to include Jerry. M [REDACTED] said, "I have told you the truth."

PENNSYLVANIA STATE POLICE CONTINUATION SHEET <input type="checkbox"/> SUPPLEMENTAL INVESTIGATION REPORT <input checked="" type="checkbox"/>		REPORT TYPE <input checked="" type="checkbox"/> INCIDENT <input type="checkbox"/> OTHER	DATE(S/DAY(S) OF INCIDENT 08/01/06-11/20/08 TIME(S) OF INCIDENT 0001-2400	INCIDENT NO. G07-1146135 JUVENILE <input type="checkbox"/> DOMESTIC VIOLENCE <input type="checkbox"/>
ATTACHMENTS: <input type="checkbox"/> FELONY CRIMES AGAINST THE PERSON <input type="checkbox"/> VICTIM/WITNESS ASSISTANCE GUIDE RECEIPT <input type="checkbox"/> PROPERTY RECORD <input type="checkbox"/> OTHER:		<input type="checkbox"/> MISSING PERSON CHECKLIST <input type="checkbox"/> STATEMENT(S) FORMS <input type="checkbox"/> RIGHTS WARNING AND WAIVER	DISP: <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> EXCEPTIONALLY CLEARED-DATE A <input type="checkbox"/> DEATH OF ACTOR D <input type="checkbox"/> VICTIM REFUSED TO COOPERATE B <input type="checkbox"/> PROSECUTION DECLINED E <input type="checkbox"/> JUVENILE/ADULT CUSTODY C <input type="checkbox"/> EXTRADITION DENIED N <input type="checkbox"/> NOT APPLICABLE F <input type="checkbox"/> MULTIPLE CLEAR-UP	
1. ORI/STATION PAPSP7400 Rockview-2370		2. DATE OF REPORT 07/19/2011		
3. OFFENSE Indecent Assault		4. VICTIM A [REDACTED] S [REDACTED]		
5. NARRATIVE				

This officer and Tpr. Robert YAKICIC interviewed 2<sup>nd</sup> Mile attendee J. S. [REDACTED]; [REDACTED], W/N/M; [REDACTED]; [REDACTED] at his residence at 0720 hrs., 07/19/2011.

S. [REDACTED] advised that he had attended the 2<sup>nd</sup> Mile program in State College for several years. He believes this was when he was in 7<sup>th</sup> through 9<sup>th</sup> grade. (approx. 2000 – 2004) During this time he had had extensive contact with Jerry SANDUSKY. He had stayed overnight at the SANDUSKY residence on numerous occasions during this time; as well as having accompanied SANDUSKY on a speaking engagement at Syracuse College. S. [REDACTED] also relates that he had been with SANDUSKY on numerous occasions at the Penn State practice facilities, and had worked out, played “polish soccer” and showered with SANDUSKY during this period of time.

S. [REDACTED] states that SANDUSKY would pick him up himself on these occasions. He would sometimes pick him up at home, however, the bulk of these times SANDUSKY would pick him up at school. (Bald Eagle Area)

S. [REDACTED] relates that SANDUSKY had given him several gifts during this time. He recalled SANDUSKY giving him a Penn State warm up suit, a Syracuse College football jacket signed by the Syracuse players, Penn State game tickets and concert and WWE wrestling tickets. S. [REDACTED] advises that he no longer has the jacket or the warm up suit and does not know what has happened to them.

S. [REDACTED] advises that SANDUSKY had never attempted anything inappropriate with him. SANDUSKY would often place his hand on S. [REDACTED]’s knee, however, although it did make him uncomfortable, he did not object, and SANDUSKY never went any further. “I just thought it was something older guys did. I didn’t really like it, but I didn’t object.”

S. [REDACTED] relates that nothing unusual occurred while he showered with SANDUSKY. He related that SANDUSKY always showered next to him, despite there being numerous showers in the facility. When questioned concerning the possibility of SANDUSKY’s helping him shower, or rinse, specifically having lifted him closer to a shower head, he stated; “There might have been something like that. I don’t exactly remember, but it sounds familiar”.

“I lost touch with him (SANDUSKY) around the time I went into 10<sup>th</sup> grade. I was in trouble a lot then; in and out of foster homes and stuff. He made me feel special, giving me stuff and spending time with me. I just always took it that he was trying to make sure I kept out of trouble. I don’t believe any of this stuff is true and hope that he’s found not guilty.”

S. [REDACTED] was supplied with contact numbers for these officers and agreed to call if he recalled anything further.

OFFICERS NAME/SIGNATURE/BADGE NO. PAPSP1101 Tpr. Mark YAKICIC 5151 <i>[Signature]</i>	BCI West - Ebensburg	7. INVS. RECM. <input checked="" type="checkbox"/> CONT. <input type="checkbox"/> TERM	8. SV/P. INT'L BADGE NO. JUL 303	9. CONCUR <input type="checkbox"/> NONCONCUR	10. PAGE 118
		STATION			

FILED FOR RECORD

2016 MAY -9 PM 12: 28

DEBRA C. INNELL  
PROTHONOTARY  
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF

CP-14-CR-2421-2011  
CP-14-CR-2422-2011

v.

GERALD A. SANDUSKY,

HONORABLE SENIOR JUDGE  
JOHN M. CLELAND

PETITIONER.

*TYPE OF PLEADING:*

MOTION FOR RECUSAL

*FILED ON BEHALF OF:*

PETITIONER, GERALD A. SANDUSKY

*COUNSEL FOR PETITIONER:*

ALEXANDER H. LINDSAY, ESQUIRE  
Pa. Supreme Court Id. No. 15088

J. ANDREW SALEMME, ESQUIRE  
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM  
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IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
v.	:	
GERALD A. SANDUSKY,	:	
PETITIONER.	:	HONORABLE SENIOR JUDGE JOHN M. CLELAND

MOTION FOR RECUSAL

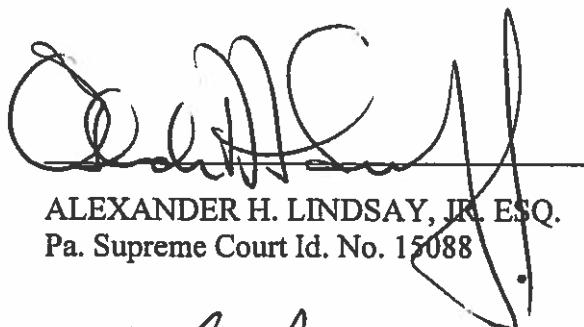
AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Motion for Recusal and avers the following in support thereof:

On May 2, 2016, after the scheduled argument in the underlying PCRA matter, the PCRA court placed on the record that it could be a fact witness with respect to one of Mr. Sandusky's claims. Specifically, the PCRA court represented, on the record, that it was present with trial counsel Joe Amendola, counsel for the Commonwealth, and District Magistrate Scott at the Hilton Garden Inn in the State College area before the scheduled preliminary hearing. At this off-the-record meeting at the Hilton Garden Inn, certain representations appear to have been made by both the Commonwealth and Mr. Amendola and an unofficial agreement was reached regarding waiver of Mr. Sandusky's preliminary hearing that was to transpire later. This agreement is extra-record and pertains to Mr. Amendola's decision to waive Mr. Sandusky's preliminary hearing, which involves a specific claim of ineffectiveness in Mr. Sandusky's petition.

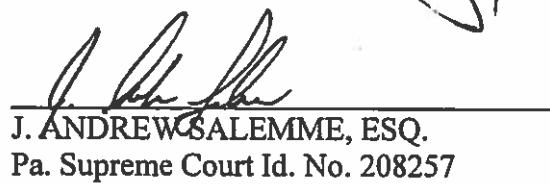


In light of the unusualness of a trial judge being present for a non-record discussion regarding a decision to waive a preliminary hearing, resulting in the PCRA court becoming a fact witness,<sup>1</sup> a conflict of interest exists and Mr. Sandusky is constrained to request this Honorable Court to recuse itself and a new jurist be appointed forthwith.

Respectfully submitted,



ALEXANDER H. LINDSAY, JR. ESQ.  
Pa. Supreme Court Id. No. 15088



J. ANDREW SALEMME, ESQ.  
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM  
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Phone: 724.282.6600  
Fax: 724.282.2672  
*Attorneys For Gerald A. Sandusky*

---

<sup>1</sup> Attached are contemporaneous notes taken by the PCRA court during the meeting that it kindly provided to the undersigned and the Commonwealth on May 3, 2016.

# ATTACHMENT

Waiver by

Condition

Waive costs to All chgs & all cr - Add second  
of 3 IDS to victim

11/12/11

Mtg

C Holt  
Gauden

Scott  
McGinnity  
Delle  
Arendola  
Greene

No increase in bail #

elec. monitoring  
House arrest  
legal, 2x week  
Medical  
church

If new chgs - same waiver & same bail  
Δ allowed to turn self in -

Want to screen out vexatious "Victims"

Δ: If future chgs will vigorously defend.

Discovery proceed ASAP -

- Waiver agreement -

March Murder Trial

June/July 2-3 weeks

Venue / venue -

IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011
	:	CP-14-CR-2422-2011
	:	
v.	:	
	:	
GERALD A. SANDUSKY,	:	
PETITIONER.	:	HONORABLE SENIOR JUDGE JOHN M. CLELAND

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5<sup>th</sup> day of May, 2016 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Via First Class Mail

Honorable John M. Cleland, Sr. Judge c/o Office of the Court Administrator and Office of the Clerk of Courts of Centre County  
Centre County Courthouse  
102 South Allegheny Street  
Bellefonte, PA 16823

Assistant Attorney General Jennifer Peterson  
Office of the Attorney General – Criminal Prosecutions Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120

Respectfully submitted,

  
ALEXANDER H. LINDSAY, JR., ESQ.  
Pa. Supreme Court Id. No. 15088  
110 East Diamond Street, Suite 301  
Butler, Pennsylvania 16001  
Phone: 724.282.6600  
Fax: 724.282.2672  
*Attorney For Gerald A. Sandusky*

**AFFIDAVIT OF JOSEPH L. AMENDOLA, ESQUIRE**

Joseph L. Amendola, Esquire, being duly sworn, declares the following:

1. I am over the age of eighteen, of sound mind and memory, and make this Affidavit of my own free will based upon my current recollection of events which occurred in 2011-2012 relating to the Gerald A. Sandusky case. I also note that virtually all of my case files (some fifteen plus boxes of materials) were turned over to Attorney Lindsay after my representation in Mr. Sandusky's case ended in approximately 2013.

2. I am an attorney with offices currently located at 1374 South Atherton Street, State College, PA 16801.

3. I represented Gerald A. Sandusky during a criminal investigation and subsequent prosecution up to and including the time of his jury trial which concluded with a guilty verdict on June 22, 2012.

4. On March 25, 2020, I received a telephone call from Attorney Alexander H. Lindsay, Jr., Mr. Sandusky's current attorney.

5. Attorney Lindsay informed me he had received a copy of a diary of Kathleen McChesney which he purported to be a diary showing actions and communications made by the Freeh Investigative Group which allegedly conducted an independent investigation with regard to the allegations of sexual abuse at Penn

State University during the time and following the period when Mr. Sandusky was associated with the University.

6. Attorney Lindsay also advised me of summaries of a series of emails of various participants in the Freeh investigation.

7. On March 27, 2020, Attorney Lindsay provided me with a summary of several purported communications noted in the McChesney diary and a few summaries of emails between some participants in the Freeh investigation.

8. These communications appeared to indicate that members of the Freeh Group and representatives of the Office of Attorney General assisted each other in their respective investigations and exchanged information related to the Penn State and Sandusky investigations.

9. Attorney Lindsay also advised me that the communications between the Attorney General's representatives and the Freeh representatives may have included information and testimony from the special investigating grand jury involved in Mr. Sandusky's case, which, if true, may have constituted a violation of grand jury secrecy rules.

10. Prior to these communications from Attorney Lindsay, to the best of my recollection, I was unaware of any collaboration between representatives from the Office of Attorney General and the Freeh investigators.

### **Jury Selection**

11. I recall generally the jury selection process in the Sandusky case. Other than what Attorney Lindsay has provided to me concerning a limited part of the jury selection transcript, I have no other records concerning the Sandusky jury selection process. I assume, however, the entire transcript of the jury selection process speaks for itself.

12. Attorney Lindsay recently provided me with a portion of the transcript of the voir dire examination of the juror identified as number 0990.

13. The transcript shows that, during the voir dire of juror number 0990, I questioned her concerning information I had received that she had been interviewed by the Freeh Group.

14. At the time of the voir dire examination of juror number 0990, I don't recall having any information about the degree of collaboration between representatives from the Office of Attorney General and the Freeh Group.

15. Had Attorney General representatives disclosed to me prior to or during jury selection about this juror's contact with the Freeh Group and its collaboration with the Freeh Group, I would have questioned her more extensively during voir dire about her knowledge of the Sandusky case and statements she had made to the Freeh group representatives.

16. Had it been disclosed to me prior to or during jury selection that juror number 0990 had been subjected to questioning by the Freeh investigators who may have been acting in concert with representatives from the Attorney General's Office, it is very likely I would have stricken her for cause or, at a minimum, used one of my peremptory strikes to remove her as a potential juror.

17. Had it been disclosed to me prior to jury selection that representatives from the Office of Attorney General were collaborating with the Freeh investigators, I would have questioned each potential juror as to whether he or she had any interactions with the Freeh investigators prior to jury selection in Mr. Sandusky's case.

18. Had I been informed by the prosecution prior to trial that they were working in concert with the Freeh Group representatives, I would have sought discovery of all statements and other related materials obtained by Freeh Group representatives regarding the Penn State/Sandusky investigation.

#### **Timing of the Trial**

19. Attorney Lindsay provided the following information to me on or about March 27, 2020:

#### **5/10/12 - Call with Paw & McNeill**

"12. Judge holding firm on trial date."

20. It appears from this information that investigators with the Freeh Group received information indicating the "judge was holding firm on trial date."

21. I have no knowledge from whom the Freeh Group investigators received this information.

22. I can state they did not receive this information from me.

23. The most challenging aspect of defending Mr. Sandusky was the unusual speed with which his case proceeded to trial, especially in light of the fact related cases involving Penn State officials weren't resolved for approximately five years following Mr. Sandusky's trial.

24. It has been alleged in court proceedings by Mr. Sandusky's current attorney that I was ineffective as counsel for Mr. Sandusky in his trial.

25. I can state with absolute certainty I believe no attorney could have effectively represented Mr. Sandusky in his case given the time constraints set by the court in his case, particularly given the fact that I was receiving literally volumes of discovery materials (over 12,000 pages) in the days and weeks prior to the commencement of Mr. Sandusky's trial.

26. The trial court denied every request I made on Mr. Sandusky's behalf for a continuance.

27. I believe I was substantially hampered in the preparation of Mr. Sandusky's defense for the following reasons:

- a. An expert forensic psychologist, considered to be one of the best in the United States, was unable to participate in the review of the Sandusky discovery and other case materials and in the preparation of Mr. Sandusky's defense due to the time constraints imposed by the trial judge, and a second forensic psychologist wouldn't even review Mr. Sandusky's case due to the time constraints;
- b. A jury selection expert, whom I believed was essential in Mr. Sandusky's case, was unable to assist the defense in jury selection because of the time constraints set by the trial court. We even requested a brief two-week continuance so that the jury consultant, who was involved in an extended jury selection process in Puerto Rico, could participate in the jury selection process. This request was also denied by the trial court;
- c. A number of other pertinent reasons as to why I could not effectively represent Mr. Sandusky at trial are set forth more fully in post-sentence motions I filed on Mr. Sandusky's behalf following his trial.

28. The trial court did agree to continue Mr. Sandusky's case briefly for a two-week period to permit the grand jury judge to review grand jury testimony to determine what testimony he would release to Mr. Sandusky's counsel. The trial court, however, continued to deny Mr. Sandusky's counsel any additional time to

adequately prepare Mr. Sandusky's defense despite the voluminous discovery materials which were being submitted to Mr. Sandusky's counsel literally days before his trial commenced.

29. The significant difficulties in the preparation of Mr. Sandusky's case, within the confines set forth by the court, were particularly compounded in light of the fact there were delays on the part of the prosecution in providing relevant discovery materials resulting in the necessity for me to file motions to compel. This discovery process was compounded further by the fact we were obtaining discovery materials from private agencies and organizations, such as the Second Mile and Penn State University, during mid-May through early June, 2012. Most of these agencies and organizations only provided discovery materials after I filed motions to compel, and, following hearings on these matters in May. The trial court, following a hearing on these motions in early to mid-May, directed most of these non-governmental entities to provide many of the discovery materials requested by me. Motions to Compel hearings were held in early to mid-May (I believe May 9<sup>th</sup>), after which, to the best of my recollection, the trial court gave these institutions and organizations two weeks to provide these materials to me. Many of these materials were delivered to my office literally within days of the commencement of Mr. Sandusky's trial which made it extremely difficult, if not impossible, to adequately review these materials to determine whether they would be helpful to Mr. Sandusky's defense. Given these

time constraints, there was no realistic way I could review all of these materials prior to trial to adequately prepare a defense for Mr. Sandusky.

30. In my legal career, which spans almost 47 years (39 years at the time of Mr. Sandusky's trial), I have never been involved in any significant case that proceeded to trial as quickly as this case. This was a very complicated case, especially in view of the fact that Mr. Sandusky was facing ten (10) separate sets of charges, each set of charges which potentially could have resulted in a separate trial on their own facts. Despite my requests on several different occasions through motions for a continuance based upon a lack of time to review discovery materials and to pursue our own investigations to develop Mr. Sandusky's defense, as well as the unavailability of key witnesses and experts, we were denied a continuance on every occasion. I had to advise my investigators to cease their investigations at the very end of May and early June, 2012 as we were forced to prepare for jury selection and trial and had no additional time to continue with our investigations.

31. I then appealed the trial court's denial of my last motion for a continuance to the Superior Court which denied my appeal without even holding a hearing on my continuance request.

32. Following the Superior Court's denial of my motion for a continuance, I then filed an appeal with the Pennsylvania Supreme Court, requesting that Court to intervene and reverse the trial court's denial of my motion for a continuance. The

Supreme Court denied my appeal, without a hearing, in late May/early June, shortly before jury selection commenced in Mr. Sandusky's case on June 5<sup>th</sup>, 2012.

33. Prior to the commencement of jury selection on June 5<sup>th</sup>, 2012, I filed a motion with the trial court to withdraw as attorney for Mr. Sandusky based upon my belief I could not adequately and effectively represent him due to the lack of time to properly prepare his defense given all the reasons previously set forth in my Post-Sentence Motion. The trial court denied my request to withdraw as counsel for Mr. Sandusky following a brief hearing on that issue.

34. One of the issues raised by current counsel was my attendance at a meeting at the Hilton Garden Inn the night before Mr. Sandusky's preliminary hearing. To the best of my recollection, this meeting was attended by representatives from the Attorney General's Office, the Magisterial District Judge presiding over Mr. Sandusky's preliminary hearing and the trial court. I recollect there were other individuals there, but I do not recall for certain at this time whom they were.

35. To the best of my recollection, I was informed of the meeting by either Joseph McGettigan, Esquire and/or Frank Fina, Esquire, both representatives from the Attorney General's Office.

36. The prosecutors and I, at my initiation, had discussed and finally agreed that, if Mr. Sandusky waived his preliminary hearing, the Attorney General's Office would not seek any increase in Mr. Sandusky's bail prior to trial even if additional

charges were filed against him following his preliminary hearing. I discussed this issue with Mr. Sandusky prior to the meeting at the Hilton Garden Inn, and he agreed to waive his preliminary hearing based upon the prosecutors' representation that they would not seek additional bail if additional charges were filed against Mr. Sandusky. I also explained to Mr. Sandusky that, although we would have the opportunity to cross-examine Commonwealth witnesses at the preliminary hearing, the hearing would likely produce very negative information alleged by the Commonwealth which would be reported extensively by the media nationwide.

37. I was acutely mindful that the Attorney General's Office had strongly advocated substantial bail (seven figures) when two additional sets of charges were filed against Mr. Sandusky by the Attorney General's Office following his initial arraignment on the original eight (8) sets of charges. It was clear the Attorney General's representatives wanted bail set high enough so that Mr. Sandusky would be incarcerated prior to trial. Mr. Sandusky and I, in our discussions prior to the waiver of his preliminary hearing and prior to the meeting at the Hilton Garden Inn, had concluded it was vitally important for Mr. Sandusky to remain free on bail to assist me and experts including investigators, psychiatrists and jury consultants, as well as to provide critical background information, in the preparation of his defense. It would have been extremely difficult for Mr. Sandusky to adequately assist me and

these other individuals in the preparation of his defense if he was incarcerated prior to trial.

38. I attended the meeting in early December 2011 at the Hilton Garden Inn in part to confirm that, in return for waiving Mr. Sandusky's preliminary hearing, the Attorney General's representatives would not seek an increase in bail prior to trial even if additional charges were filed against Mr. Sandusky, which was a significant possibility at the time.

39. Again, I recall that Attorney General representatives at this meeting at the Hilton Garden Inn included Joseph McGettigan, Esquire and Frank Fina, Esquire. I also recall the Magisterial District Judge was present, along with the trial judge. I recall there were other individuals present at this meeting, although I cannot recall at this time the names of those individuals.

40. It is my recollection, at this meeting, the trial judge initially suggested a trial date in March or April. It is also my recollection that the trial judge, after I suggested that March or April would present a problem for properly preparing for Mr. Sandusky's case, then suggested a trial date in May. It is my further recollection that, subsequently, following a request from the grand jury judge, the trial court provided the grand jury judge with a two-week additional period to review grand jury testimony to determine what grand jury materials the grand jury judge would provide

to me. This two-week period pushed the commencement of Mr. Sandusky's trial back to early June.

41. Although I generally recall other administrative matters being discussed at the meeting at the Hilton Garden Inn in December 2011, I currently have no specific recollection as to whether the trial judge discussed other matters concerning Mr. Sandusky's case with counsel for the Commonwealth and me during that meeting.

I declare under penalty of perjury that the foregoing facts contained in this Affidavit are true and correct to the best of my recollection, knowledge, information, and belief. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

Joseph L. Amendola, Esquire  
1374 South Atherton Street  
State College, PA 16801  
(814) 933-8456  
[lawamendola@yahoo.com](mailto:lawamendola@yahoo.com)

SWORN and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Waive high

Condition

Waive all chgs & all CT - Add second  
of 3 IDS to victim

WHD  
MTS

C Hiltz  
Gardner

SCOTT  
McGinnis  
Delle  
Owendale

No increase in bail #

elec. monitoring  
house arrest  
legal, 2x week  
Medical  
church

If new chgs - same waived & same bail  
Δ allowed to turn self in -

Want to screen out vexatious "victims"

Δ: If future chgs will vigorously defend.

Discovery proceed ASAP -

- Waiver agreement -

March Murder Trial

June (July)      2-3 weeks

Venue / venue -

indicate that his belief was unreasonable. That being the case, counsel had no reason to even consider filing a motion to change venue or venire or commissioning an expert report designed to support such a motion. He thus was not ineffective for failing to do so.

Amendola also acted deliberately in not filing a motion to continue the trial until there had been a longer cooling-off period.

Trial counsel was familiar with the “cooling-off” concept, Ans. to Mot. for Change of Venue/Venire, 02/28/2012, ¶ 10, as well as the relevant case law. Def. Memo. in Opp., 02/08/2012. It thus was not out of ignorance that he neglected to raise the issue, but because he felt certain that it would be to no avail. As he unhesitatingly explained at the PCRA hearing when asked whether he had requested a continuance based on the need for a cooling-off period, “I did not. And the reason I didn’t, quite frankly, was because if we weren’t getting continuances on all the other legitimate reasons that we had, we certainly weren’t going to get it on that basis.” (PCRA, p. 58). Based on his many interactions with Judge Cleland, he was certain that such a request would have been denied on the basis that the jury selection process itself would reveal whether media saturation had in fact unduly prejudiced the jury pool. (*Id.* at 58-59). That was a reasonable assumption.

As the record amply reflects, Judge Cleland took a no-nonsense approach from start to finish with respect to the management of these cases and was not inclined to delay the trial unless he deemed it to be absolutely necessary. He deemed it unnecessary, though, when Amendola learned just a month before jury selection that his jury consultant would be unavailable in June; when expert witnesses counsel expected to retain could not accommodate a June trial; when potentially exculpatory lay-witnesses were unavailable while defending their own criminal charges; and when defense counsel received thousands of pages of discovery materials not long before jury selection was scheduled to commence. See e.g., Mot. for Cont., 05/25/2012, pp. 8-9; (Transcript (Mot. for Cont.) (Under Seal), 05/29/2012). Nor was Judge Cleland persuaded to continue the trial when counsel, purporting to feel overwhelmed by existing developments, sought leave to withdraw from the case. See Mot. to Withdraw, 06/05/2012, (Mot. to Withdraw Transcript, 06/05/2012). In the midst of counsel’s impassioned speech regarding his inability to adequately try the case, in fact, Judge Cleland announced, “This case has been on track for this trial date since at least January. It’s no surprise to anybody. I never ever suggested or made any indication that there would be a continuance, except as

requested by Judge Feudale and as a courtesy to him. I have never, I do not believe, misled or given any indication that I had any intention of scheduling this case except when it was scheduled and we're going to proceed." (*Id.* at 7).

In light of the foregoing, it is fanciful to suppose that Judge Cleland would have granted a continuance based on the allegation that a cooling-off period was necessary. In light of his position on the necessity of a jury consultant, moreover, it is fanciful to suppose that an expert report, even one indicating significant community bias against Sandusky, would have convinced him that the traditional *voir dire* process would be inadequate to weed out biased venire persons.

Once jury selection was underway, though, should counsel have asked prospective jurors whether they had read the grand jury presentments or any other specific accounts of the charges or the defendant's culpability? Sandusky says yes and claims that he was ineffective for not probing more deeply. Viewed through the lens of the law, the record says differently.

In *Commonwealth v. Briggs*, 12 A.3d 291 (Pa. 2011), our Supreme Court again addressed the realities of selecting a constitutionally sound jury when the case at issue was the subject of substantial media coverage. Incorporating the United States Supreme Court's assessment of the same issue, it identified as the decisive question whether a prospective juror exposed to media accounts could suspend any preliminary opinions he or she had formed and decide the matter after considering only the evidence he or she received at trial. *Id.* at 314. In the Court's words,

[T]he pivotal question in determining whether an impartial jury may be selected is not whether prospective jurors have knowledge of the crime being tried, or have even formed an initial opinion based on the news coverage they had been exposed to, but, rather, whether it is possible for those jurors to set aside their impressions or preliminary opinions and render a verdict solely based on the evidence presented to them at trial.

*Id.*

Additionally, as much as Sandusky would like to rely on academic concepts like "presumptive bias" to suggest that Amendola had a duty to delve further into what the jurors in this case had read, the courts of this Commonwealth generally adhere to the principle that jurors are capable of the introspection necessary to evaluate their own biases. Accordingly, courts will measure the continuing effects of pretrial publicity by reference to the jurors' answers.

*Commonwealth v. Robinson*, 864 A.2d 460 (Pa. 2004). "Normally," says the Court, "what prospective jurors tell us about their ability to be impartial will be a reliable guide to whether the

Where the inquiry is what Judge Cleland would have done, moreover, it is immaterial whether he rightly posited that the Commonwealth could have referenced the declarants' pending perjury charges or introduced their hand-written notes and e-mails as impeachment evidence.<sup>18</sup> He believed each to be admissible at the time—a belief that would not have been affected by the insertion of Rule 804(b)(1)—and based his decision, at least in part, on that consideration.

The Court need not consider the likelihood of counsel effectively impeaching McQueary with the proposed grand jury testimony, then, because the defendant has not even demonstrated a reasonable probability that Judge Cleland would have allowed counsel to use it pursuant to Rule 804(b)(1). This claim, then, fails for want of merit.

*Repressed Memory/Brady Allegations (Claims 15-17):*

Here the defendant alleges that the Commonwealth violated *Commonwealth v. Brady*, 373 U.S. 83 (1963), by failing to disclose that some of the victims' memories had been recovered through repressed memory therapy, which information, he says, was otherwise unlearnable because of the doctor-patient privilege. Whereas it was not revealed after trial that A█████████████████████, D.S., and Matt Sandusky only recalled their abuse because of the therapy, he adds, a new trial is warranted based on after-discovered evidence. Alternatively, he contends that the victims' pre-trial statements reasonably indicated therapy-based memory reproduction such that counsel should have filed a motion *in limine* to preclude their testimony and/or retained an expert to discuss the unreliability of such memories. All three claims fail for want of merit.

Although he was denied access to the victims' psychological records, Sandusky was permitted to call witnesses to explore whether the victims had undergone repressed memory therapy prior to trial, and he did explore that subject with Dr. S██████████ ("████████"), Michael Gillum, A█████████████████████, B█████████████████████, and Dr. Elizabeth Loftus, none of whom affirmed the defendant's hypothesis.

During his direct testimony, Gillum, R████████'s treating therapist, plainly and credibly stated, "I don't deal with repressed memory [and] I don't work with anyone who claims to have repressed memories or anything along those lines." (PCRA, 03/24/2017, p. 159). He further

<sup>18</sup> The Rules of Evidence—Rule 609, specifically—allow for the impeaching of witnesses with prior convictions for crimes of dishonesty. Because a criminal defendant is presumed innocent until proven guilty, however, the Commonwealth may not use unproven charges to impeach. *Commonwealth v. Doswell*, 621 A.2d 104, 106 (Pa. 1993). Assuming the Commonwealth could have authenticated them, though, Curley and Schultz's handwritten notes and e-mails would indeed have been admissible under Rule 804 as statements against interest. Because their purpose would have been to impeach Curley's statements, not as substantive evidence against Sandusky, moreover, the Confrontation Clause would not have protected Sandusky against their admission.

articulated his negative assessment of repressed memory therapy and why he did not engage in it. (*Id.* at 164-65). While S\_\_\_\_\_ acknowledged that he and his therapist had discussed methods of unearthing repressed memories, moreover, he stated definitively that he had not undergone that type of therapy prior to the defendant's trial. (*Id.*, 05/11/2017, p. 20).

Dr. Loftus had a different opinion based on "impressions" from Gillum's book, statements S\_\_\_\_\_ made two years after the trial, and the fact that the victims whose excerpted trial testimony she reviewed did not give consistent stories to the police, the grand jury, and the trial jury. (*Id.* at 71-90). Having been rendered after an uncritical review of an absurdly incomplete record carefully dissected to include only pieces of information tending to support Sandusky's repressed memory theory, however, that opinion was entirely ineffective to rebut Gillum's and S\_\_\_\_\_'s definitive denials.

There is no reason, then, to conclude that the Commonwealth was not telling Amendola the truth when it represented to him that it had no information regarding repressed memories. (See *id.*, 03/24/2017, pp. 104-06) (Amendola testifying that he asked the Commonwealth for information pertaining to the issue and was told that none existed). Accordingly, there is no basis for the Court to conclude that the Commonwealth violated its *Brady* obligations, as the Commonwealth necessarily must be in possession of the exculpatory or impeachment information before it has any duty to disclose it.

Sandusky further contends that the Commonwealth violated its *Brady* obligations by withholding information that some of the victims added previously undisclosed details about their abuse while interviewing with Attorney McGettigan prior to trial. As he accurately observes, that information constituted impeachment evidence that the Commonwealth was obliged to disclose pursuant to *Brady* and its progeny. That does not mean, however, that the omission warrants a new trial.

Proving a *Brady* violation is a tripartite proposition. The defendant must establish that the evidence at issue was either exculpatory or could have been used to impeach a witness, that it was deliberately or inadvertently suppressed by the Commonwealth, and that he suffered prejudice because of it. *Commonwealth v. Paddy*, 15 A.3d 431, 450 (Pa. 2011). Prejudice results when the suppressed evidence was material, meaning that there is a reasonable probability that the result of the proceeding would have been different had it been provided to the defense. *Id.*

IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF : No. CP-14-CR-2422-201 1  
PENNSYLVANIA :  
: v. :  
: GERALD A. SANDUSKY, :  
Defendant :  
:

Pages 1 through 87      Annex Courtroom  
                          Centre County Courthouse Annex  
                          106 East High Street  
                          Bellefonte, Pennsylvania

Tuesday, May 17th, 2022

Met, pursuant to notice at, 11:00 a.m.

BEFORE:      MAUREEN A. SKERDA, Judge

APPEARANCES:

JENNIFER A. BUCK, ESQUIRE  
Pennsylvania Office of Attorney General  
Strawberry Square, Floor 16  
Harrisburg, Pennsylvania, 17120  
(For the Commonwealth)

ALEXANDER H. LINDSAY, JR., ESQUIRE  
110 East Diamond Street  
Butler, Pennsylvania, 16001  
(For the Defendant)

1                   JUDGE SKERDA: Thank you. I have no  
2 questions for the witness. You may step down. Your  
3 next witness?

4                   ATTORNEY BUCK: The Commonwealth calls  
5 Sheriff Bryan Sampsel.

6                   JUDGE SKERDA: Sheriff Sampsel, come  
7 forward and be sworn. Will you raise your right hand?  
8 Whereupon,

9                   BRYAN SAMPSEL,  
10 having been first duly sworn, testified as follows:

11                  JUDGE SKERDA: Please, be seated.

12                  THE WITNESS: Thank you.

13                  DIRECT EXAMINATION

14 BY ATTORNEY BUCK:

15 Q. Good morning, Sheriff.

16 A. Good morning.

17 Q. How long have you worked with the sheriff's  
18 department?

19 A. Almost 20 years now.

20 Q. When did you become sheriff?

21 A. 2016.

22 Q. In June of 2012, did you attend the Sandusky  
23 trial?

24 A. Unfortunately, I did. It was a long event,  
25 yes.

1       Q. And with respect to the trial, I would just  
2 like to have you walk the Court through exactly what a  
3 sheriff's responsibilities are in terms of a normal  
4 trial with respect to the courtroom, the jurors, and  
5 the defendant?

6       A. A normal courtroom if we have a jury trial,  
7 we have usually two deputy sheriffs with the inmate or  
8 with the defendant, and we might have one other deputy  
9 sheriff sitting in the room such as we have sitting  
10 here just to kind of oversee the room. And the other  
11 two would be placed behind the defendant.

12           The difference of the 2012 Sandusky trial, we  
13 had a directive from Judge Cleland that we had to  
14 monitor people coming in, take their cell phones.  
15 There was no cell phones allowed, no tweets, no  
16 Facebooking, no news reporting during the trial. So we  
17 had to monitor the courtroom more closely; 230 roughly  
18 people sitting in the gallery. We had to watch  
19 everybody in there.

20           So I was trying to count how many we had in  
21 the courtroom just during the daily functions of the  
22 trial, just in the courtroom alone I believe we had  
23 five to six deputies; one assigned to the judge, two in  
24 the back corners, two in the front, because there were  
25 some people who were heated over. One side of the

1 defense, they believed Jerry was innocent of this, and  
2 they had the other side that was adamant that he did  
3 it, and it was kind of --- it was very controversial  
4 and I'll say very alarming to us. We had a lot of  
5 people that had a lot of tension and anger on both  
6 sides.

7 So we had the courtroom pretty well covered,  
8 and we had people just outside the courtroom stationed  
9 in the --- it was over in Courtroom 1. We had them  
10 outside the courtroom to kind of keep an eye on the  
11 people who were going to testify. We had someone  
12 watching that so no one could come in behind the judge.  
13 So we had seven or eight deputies just in that hallway  
14 and in the courtroom and that doesn't include everyone  
15 outside checking people in and coming in the doors and  
16 our normal procedures and normal court functions of  
17 that day.

18 Q. In terms of overtime, Sheriff, what steps did  
19 you take personally in the morning before trial began?

20 A. In the morning, I arrived between 5:00 and  
21 5:30 depending on who I was meeting, and I would walk  
22 around with a bomb dog inside and out of the building  
23 just to check for anything, placed explosives anywhere.  
24 When they left, I was responsible for going and meeting  
25 the jurors at the jail, the county jail, following the

1 jury buses in and making sure they got in safely with  
2 no one identifying them or trying to cut us off or  
3 getting to interfere with us. So that was my duties of  
4 the day. Then I believe was the first part of the  
5 trial. Then I was assigned back over here for the  
6 Russian trial, which was in this courtroom.

7 Q. You indicated that in the morning before  
8 court actually began, you went around with the bomb  
9 dog?

10 A. That's correct.

11 Q. And you were also responsible for ensuring  
12 the safety and the transport of the jurors?

13 A. That's correct.

14 Q. And that would all have been overtime;  
15 correct?

16 A. That would've been overtime, correct, and  
17 that would've been charged to the Sandusky trial. And  
18 then when I went off that duty, which was usually  
19 around 8:30, when this trial --- when the other trial  
20 started, then I was back on regular hours. And then at  
21 the end of the day, I would be pulled off the Russian  
22 trial --- I'm sorry, but that's what we called it back  
23 then. I'd be called off that trial and to follow  
24 jurors back to the jail, make sure they're escorted  
25 back safely, and then I would go back on the clock for

1 the Sandusky trial.

2 Q. So overtime at the end of the day would  
3 entail escorting the jurors as well as doing a sweep of  
4 the courtroom?

5 A. That's correct. Not only that, we had  
6 everybody come into court early because we had to get I  
7 believe it was 85 credentialed news media through the  
8 door, 85 public. So it was 200 and --- like I said,  
9 roughly 230 people we had to get in every morning with  
10 that rush before the jury trial started.

11 Q. In terms of the courtroom itself, were there  
12 portions for the media and portions for the public that  
13 were delineated?

14 A. There were, yes. I can't remember exactly  
15 how they were, but there were portions sectioned off  
16 for the news media and then public, and then you had  
17 Mr. Sandusky's family in one portion behind him and the  
18 defense table, and then you had the Attorney General's  
19 Office with their five or six people with them or how  
20 many they had. So everything was portioned off. We  
21 had the room secured. It was a very well-organized and  
22 very well-run jury trial.

23 Q. With respect to Mr. Sandusky, when he would  
24 arrive at the courthouse, what measures would be taken  
25 to ensure his safety?

1       A. I was a sergeant then, so I was in the  
2 office. So I was always there and were communicating  
3 when the bus would come in. We'd have people out back  
4 to meet him. So I'd say if the jurors were coming in,  
5 we'd bring the jurors in, they'd block the road off.  
6 The jurors would come in the room, and then they  
7 usually got here about I believe 7:30, quarter 'til  
8 8:00. And then Mr. Sandusky would show up, and Judge  
9 Cleland would be followed in by a deputy sheriff who  
10 was on overtime because he would meet him at the hotel  
11 room and follow the judge in. The judge would come in  
12 and then he'd follow him back at the end of the day, so  
13 that was also overtime because we didn't --- like I  
14 said, anything, regular hours, he sat beside the judge,  
15 and that was Deputy Kabilko. He was assigned to the  
16 judge almost every time he came here.

17           But we would have five or six guys out back  
18 because the news media would know. They'd see us  
19 starting to get, you know, about 8:15, between 8:00 and  
20 8:15 Jerry came in with his Counsel at the time, and we  
21 would open the gate, kind of sectioned everything off  
22 up there. And if you've been to the back of the  
23 courthouse, you'll see how we used to come out and then  
24 we would just take --- cross arms and one side was for  
25 the news media, small tent, so we'd get him out of the

1 car, and like five or six of us --- four or five of us  
2 escorted him in. We'd bring him in through that. They  
3 would get their pictures and ask them stuff, and he  
4 would say something or he wouldn't say something, and  
5 we'd bring him in. Then the judge would come in and  
6 then the Attorney General's Office came in. We just  
7 kept that --- we would keep that whole area just closed  
8 off, so it was just closed off for there was no other  
9 people parking there except for the Defendant and his  
10 team and some other folks.

11 Q. And so everyone associated with the trial,  
12 the Defendant, the prosecution, the judge, the jurors,  
13 they all had to be specially escorted into the  
14 courthouse to ensure their safety?

15 A. That's correct. We didn't know what to  
16 expect. We had never dealt with anything this big. It  
17 was --- I wasn't down at the Cosby trial, but this  
18 wasn't just Jerry Sandusky on trial. This was Penn  
19 State, Joe Paterno. This was everybody on trial. So  
20 to us it was the biggest thing that Centre County had  
21 ever seen since that time --- before that time and  
22 since that time it's the biggest trial we've ever seen.

23 Q. With respect to outside law enforcement, were  
24 they also --- did they also have a presence around the  
25 courthouse?

1       A. They did, especially the first week, we asked  
2 for assistance. I believe we actually had Lycoming  
3 County Deputy Sheriffs come up and help us a few days  
4 too. And I don't know if that was billed in there or  
5 not; I wasn't the sheriff at the time. But we had what  
6 we call the TRT Team, Tactical Response Team. We had a  
7 few members from that group.

8             Usually, each department would send one  
9 person because everyone is staffed and they can only  
10 usually give up a person, one or two people. So we had  
11 a few people here from each department, and they would  
12 just take positions because we couldn't cover  
13 everything during the trial. So just imagine the front  
14 of the courthouse with 300 or 400 people in front of it  
15 and trying to maintain a security presence. And  
16 Bellefonte Police had to direct traffic around 30 or 40  
17 satellite trucks. I mean it was the craziest thing I'd  
18 ever seen in my life.

19       Q. You mentioned earlier that you were assigned  
20 to another trial as well as Mr. Sandusky's; correct?

21       A. That's correct.

22       Q. Where was that particular trial held?

23       A. It was right here in this room.

24       Q. And did it overlap completely with Mr.  
25 Sandusky's trial?

1       A. No, it was the first four days. If I  
2 remember correctly, they started the same day, and then  
3 the Russian trial ended on day four of the Sandusky  
4 trial. And then I was assigned back to the --- and I  
5 was --- most of my time that first four days was after  
6 9:00 was sitting in that room watching a camera  
7 watching all the defendants and the only other escape  
8 route was there or there (indicating). So I sat in  
9 there and watched the camera what they were doing, and  
10 they would call me, and I might leave and go do  
11 something for the Sandusky trial and come back. But my  
12 main job those four days was here, provide security and  
13 watch here.

14      Q. In terms of tracking your overtime, did you  
15 differentiate between the time that you spent with Mr.  
16 Sandusky's trial as well as the time that you spent  
17 with the other trial that was held here in the Annex?

18      A. Oh, yeah, I went and charged that. I just  
19 charged the two-and-a-half hours in the morning and  
20 then the hour or two at night, whatever it might've  
21 been. Yeah, I went and charged it that way. I've  
22 never worked that much in two weeks in my entire life.  
23 That was a long two weeks of work.

24      Q. And do you know at the time of Mr. Sandusky's  
25 trial approximately how many deputies were involved?

1       A. Well, we were not allowed to take vacation  
2 for those two weeks. We was all hands on deck. I'm  
3 going to say 20 to 25 deputies, you know, part time,  
4 some would come, might have to go, but we had a core  
5 staff probably 15 to 20 just to do --- 15 to 20 people  
6 just to do what we had to do every day. That's my best  
7 recollection.

8                     ATTORNEY BUCK: That's all the  
9 questions I have, Your Honor.

10                  JUDGE SKERDA: Attorney Lindsay?

11                  CROSS EXAMINATION

12 BY ATTORNEY LINDSAY:

13       Q. Sheriff Sampsel, I think you would agree that  
14 there's never been anything like this to anybody's  
15 knowledge in Centre County; correct?

16       A. I would say within the state too. I mean it  
17 was a pretty big trial. So no, nothing like this in  
18 Centre County ever before.

19       Q. Your testimony is as far as you know there's  
20 never been anything like this in the state; is that  
21 correct?

22       A. Well, I think the Cosby trial was as big, but  
23 up until that point I think ours was the biggest trial  
24 we ever had with that much news media present in one  
25 area.

1       Q. I think you indicated that as far as ---  
2 well, first of all, you indicated that you had 20 to 25  
3 deputies assigned to work this particular situation?

4       A. I didn't. I didn't assign them, so I was one  
5 of them. I was one of the many. Right now I have a  
6 staff of around 30, but that number fluctuates when  
7 someone retires or quits or moves on, so I'm taking a  
8 rough guess, 15 to 20 every day. I'm probably leaning  
9 more towards 20 because we needed people everywhere.

10      Q. Why?

11      A. There was so much tension about it. I mean  
12 you had people who were on both sides of the aisle who  
13 didn't believe Jerry did it, who believed Jerry did it,  
14 and they were pretty hostile, some of them.

15      Q. This is in the courtroom itself?

16      A. Just monitoring social media and the intel we  
17 were getting that it was a hot-button issue. I mean  
18 you had Joe Paterno, who was fired and terminated, and  
19 it was just --- there was a lot of angst here in Centre  
20 County.

21      Q. I think you used the expression, I'm not sure  
22 if I got the word right, but as far as being in the  
23 courtroom itself it was scary; is that what you said?

24      A. No, I didn't use that word.

25      Q. What did you use; I don't remember?

1       A. I wasn't in the courtroom much at all during  
2 the trial at all. I said there were probably --- there  
3 was factions that you had to watch who were angry about  
4 different things, and we had some intel on some people  
5 we watched and kept an eye on them, on both sides.

6       Q. You indicated that there were 300 to 400  
7 people outside; is that what you said?

8       A. I would guess probably 300, 300 to 400.  
9 During verdict night, towards the end of the trial,  
10 there was probably more. I mean it was packed; this  
11 whole area was packed. I didn't count the people. But  
12 during a normal day throughout the trial, there was  
13 probably 250 to 300 people just inside the --- 250  
14 maybe, 230, somewhere around there, inside the  
15 courtroom, so I'm just imagining how many more people  
16 were standing out here waiting because you had news  
17 crews. People knew the verdict was coming. People  
18 dumped into this area.

19       Q. When you say that they were outside, you mean  
20 standing here the whole day?

21       A. All day, tents. There was 20 pop-up tents  
22 around, 30 or 40 satellite trucks. There was news  
23 media everywhere. They used this room above here for a  
24 satellite room for another room for credentialed media.  
25 So there was 85 news media inside the courtroom and

1 offered up to a hundred spots over here. So in any  
2 given day, there could've been 350 people here.

3 Q. When you brought the jury in, ---

4 A. Yes.

5 Q. --- you brought them in on a bus I take it?

6 A. I drove in a cruiser behind them and followed  
7 them in to make sure no one interacted, no one tried to  
8 stop them, no one got --- just no one got in there way;  
9 I made sure they got here safely.

10 Q. Where did you drop them off?

11 A. On the downhill side of the courthouse.

12 Q. The what?

13 A. On the downhill side of the courthouse in the  
14 middle, there's a door that's alarmed all the time. We  
15 had someone --- we had to have that stationed as well  
16 because they had to disarm it every day and bring the  
17 jurors in, and then we armed it back, and they stayed  
18 there.

19 Q. All right. Were there people in the vicinity  
20 of that door when you brought the jurors through?

21 A. Yeah, we stopped --- we stopped traffic. We  
22 had deputies walk up and keep people back so they  
23 couldn't take pictures of the jurors.

24 Q. Was there a crowd there that was pushed back  
25 as the jurors ---?

1       A. I don't remember that. There was people  
2 trying to get pictures. We kept them down pretty much  
3 at the bottom of the hill into the top of the --- or  
4 behind the courthouse we blocked that road off at that  
5 point.

6       Q. You indicated, I believe, on Cross  
7 Examination that as the trial went on the crowd  
8 actually increased; is that correct?

9       A. Yes. Towards --- I wouldn't say --- the last  
10 night when they knew the verdict was getting close and  
11 they're doing testimony, I think they --- think things  
12 were getting close to the end and started getting more  
13 people here, yes. That's my best recollection.

14      Q. Would it be fair to say there were --- if  
15 there were 300 or 400 regularly, there were thousands?

16      A. No, wasn't thousands. Maybe 300 to 500 then  
17 for the night of the jury --- or of the verdict. I  
18 mean you got --- they had people everywhere. I mean  
19 this was the craziest thing I'd ever seen in my life  
20 and probably will ever see hopefully. Don't hope to  
21 see that again because it was busy times, and I've  
22 never seen anything like it to be honest with you.

23      Q. Can you tell me exactly why you thought it  
24 was the craziest thing you've ever seen?

25      A. I've just never saw media from all over the

1 country. I mean I talked to CNN, Fox News, just people  
2 from all over. People you see on TV that are not  
3 stationed here. You know, we were getting news people  
4 from New York, from California, Texas, I mean they were  
5 from everywhere. And I would meet them because I was  
6 helping check people in the doors and stuff, you know,  
7 just some friendly conversation, where are you from,  
8 blah, blah, blah, so it was --- like I said, it was the  
9 craziest thing I've ever been a part of.

10 ATTORNEY LINDSAY: I think that's all.

11 JUDGE SKERDA: Thank you, Sheriff. Is  
12 there any Redirect?

13 ATTORNEY BUCK: No, Your Honor.

14 JUDGE SKERDA: Thank you. You may step  
15 down. Are there additional witnesses?

16 ATTORNEY BUCK: Your Honor, the  
17 Commonwealth's final witness was to be Chief Shawn  
18 Weaver of the Bellefonte Borough Police Department. He  
19 was the incident commander with respect to the response  
20 team that assembled for Mr. Sandusky's trial, whose  
21 costs appear on the back page of Exhibit No. 10; that's  
22 for Spring Township, Ferguson Township, State College  
23 Borough, and Patton Township. Unfortunately, I  
24 received a call this morning, Your Honor, that he is  
25 home ill and he cannot be here this morning. So we're

1 not able to present his testimony as planned. The  
2 Commonwealth would kindly request Your Honor just to  
3 leave the record open to receive his testimony at a  
4 date in the near future that's convenient with the  
5 Court and Mr. Lindsay, but we sincerely apologize. We  
6 did not anticipate this.

7 JUDGE SKERDA: Mr. Lindsay, you didn't  
8 anticipate that either; did you?

9 ATTORNEY LINDSAY: There's much I did  
10 not anticipate, Your Honor.

11 JUDGE SKERDA: Okay. But with that,  
12 again, you really are not in a position to stipulate to  
13 these amounts I assume without testimony, and I will  
14 continue then the matter to a later date because we do  
15 need to conclude with that information.

16 ATTORNEY LINDSAY: Could we --- I'm  
17 sorry, this is so crazy. I'm uncomfortable sitting and  
18 talking.

19 JUDGE SKERDA: Well, I understand that.

20 ATTORNEY LINDSAY: It's important with  
21 the mic. This has come at me very fast. I only  
22 learned last night, late last night, who the witnesses  
23 would be, and I'm trying to assimilate the testimony as  
24 best I can with the documents. As you can see, I'm  
25 shuffling documents around, trying to keep up with the

1 page numbers. It would be very useful as this goes on  
2 if we could get a transcript of this hearing so when we  
3 come back and look at it and I think ultimately we can  
4 use the transcript because you see these things are all  
5 discrete issues, and I'm wondering if we can get a  
6 transcript at least ---.

7 JUDGE SKERDA: Well, I'll ask their  
8 court reporter how long?

9 COURT REPORTER: It would take probably  
10 between a week to two weeks.

11 JUDGE SKERDA: A week or two weeks, so  
12 we won't reconvene until the transcript is prepared  
13 then.

14 ATTORNEY LINDSAY: Very good.

15 JUDGE SKERDA: Then we'll have that.  
16 I'm not certain about dates. I didn't expect this  
17 either, and with that I know I'll be in the vicinity in  
18 June sometime, but I'm not sure when. I can check with  
19 my staff to find out when I'd be close to State  
20 College. Otherwise, I'll do what I did this morning  
21 and just commute from home, but it could save you some  
22 time. So he would be your last witness, and then how  
23 many --- do you anticipate presenting any additional  
24 witnesses?

25 ATTORNEY LINDSAY: No, not at this

1 time. After I consult with Mr. Sandusky ---.

2 JUDGE SKERDA: So we're looking at an  
3 hour or two?

4 ATTORNEY LINDSAY: Yes. But I was  
5 wondering with regard there are very potent,  
6 significant legal arguments to be made about whether  
7 these are legitimate costs, whether they're probably  
8 ---?

9 JUDGE SKERDA: Extraordinary or  
10 ordinary is the way the Court would characterize. Is  
11 it a necessary expense? Is it a usual expense? Those  
12 are some of the words I examined in terms of what the  
13 Court would be considering. And again, it's possible  
14 that the two Counsel could stipulate about what they  
15 believe might be usual so that we could narrow the  
16 issues. I've asked you to do that before. Ms. Buck's  
17 initial statement indicated that the sum would not be  
18 \$95,000, but it didn't give me any indication of where.  
19 And then recently there was movement in terms of what  
20 she believed was appropriate. But if the two of you  
21 find some middle ground there, the Court would  
22 entertain your considerations as well.

23 ATTORNEY LINDSAY: I don't know if  
24 there's much chance of compromise on the cost because  
25 our ---.

1                   JUDGE SKERDA: Your position is zero?  
2                   ATTORNEY LINDSAY: That's my position.  
3                   JUDGE SKERDA: I understand that. But  
4 I would urge you to read closely in terms of what might  
5 be extraordinary here.

6                   ATTORNEY LINDSAY: Sure. Well, I'm not  
7 suggesting --- the question ---.

8                   JUDGE SKERDA: Your legal argument I  
9 understand and that is the costs should've been ---  
10 anything that entered judgment should've been done.

11                  ATTORNEY LINDSAY: But there's also a  
12 legal argument to be made. I'd prefer to get the  
13 transcript and make it then.

14                  JUDGE SKERDA: Sure.

15                  ATTORNEY LINDSAY: I don't want to  
16 without preparation but if you take something --- most  
17 of these costs appear to be related to the sensational  
18 nature of this particular trial. And the costs are  
19 related to the sheriffs, the crackers, water, juror  
20 expenses, and so forth. And there is a --- the Coder  
21 case allowed the costs with regard to when there was a  
22 change in venue because of ---.

23                  JUDGE SKERDA: The Mercer County venue,  
24 I remember that one, yes.

25                  ATTORNEY LINDSAY: It's a Mercer County

1 case, and the Coder case indicates that he should have  
2 been --- the defendant should've been aware of these  
3 costs when he moved --- the costs were related to a  
4 change of venue. And he said because it was such a  
5 high-profile case he should not be charged with  
6 expenses related to the change of venue or bringing  
7 jurors in, whatever. But that's a legal cost. I think  
8 this is a quantum leap, and I think that's what we will  
9 address eventually.

10 JUDGE SKERDA: I think there was the  
11 whole series Larsen/Fordyce, if I'm pronouncing that  
12 one correctly, that whole group of cases, no one has  
13 ever defined what reasonable costs might be. No one  
14 has defined it. It's case by case. I recognize that.  
15 That's why it's an interesting hearing.

16 ATTORNEY LINDSAY: It's interesting you  
17 say that because I spent a lot of time trying to  
18 Shepardize every case, and it seems to me that it ought  
19 to be statutory, and I think there's some authority  
20 that the Supreme Court should've made with rules, but  
21 they didn't.

22 JUDGE SKERDA: And years ago I recall  
23 hearing a similar issue from an inmate and Commonwealth  
24 Court upheld what I did in that case, and I recall it  
25 was the same thing, reading each piece and saying

1 there's nothing here that will give us guidance. But  
2 one thing is clear is it's reimbursable. That certain  
3 expenses are reimbursable; again, case by case, piece  
4 by piece.

5 ATTORNEY LINDSAY: Very good.

6 JUDGE SKERDA: Thank you. With that, I  
7 know that the court administrators will be busy from  
8 Warren County and Centre County finding dates for us to  
9 come back. I apologize that we're not concluded, but  
10 we'll look at about two hours on another date. Thank  
11 you. Court is adjourned.

12 ATTORNEY BUCK: Thank you, Your Honor.

13

14 (Whereupon, at 12:37 p.m., the hearing  
15 was adjourned.)

16 \* \* \*

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1                   C E R T I F I C A T E

2                   I hereby certify, as the stenographic reporter,  
3 that the foregoing proceedings were taken  
4 stenographically by me, and thereafter reduced to  
5 typewriting by me or under my direction; and that this  
6 transcript is a true and accurate record to the best of  
7 my ability.

8

9                   PRINCIPLE COURT REPORTING SERVICES, INC.

10

11                   By:

  
Dale Curtis Rose, Jr.

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Commonwealth of Pennsylvania Notary Public
Dale Curtis Rose, Notary Public
Somerset County
My commission expires February 10, 2023
Commission number 1221791
Member, Pennsylvania Association of Notaries



PENNSYLVANIA OFFICE OF ATTORNEY GENERAL  
CRIMINAL LAW DIVISION  
INVESTIGATIVE REPORT

CLD-1

Case #: 63275

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CASE #: 63275  
SECTION / LOCATION: Criminal Prosecution-Harrisburg  
CASE TITLE: Gerald Sandusky  
CASE STATUS: ACTIVE  
PRIMARY AGENT: Sassano, Anthony  
PRIMARY ATTORNEY: Eshbach, Jonelle H

TYPE: Supplemental 17  
REPORT BY: Agt. Anthony L. Sassano  
PREPARED ON: May 27, 2011

OTHER AGENTS / OFFICERS: None

**SYNOPSIS:**

This report concerns an interview with S [REDACTED] S [REDACTED]. Cpl. Leiter requested I interview both S [REDACTED] S [REDACTED] and his brother J [REDACTED] as their names came up in a prior interview as having been associated with Jerry Sandusky.

**DETAILS:**

1. On 5-27-11 at 12:50PM, I interview S [REDACTED] S [REDACTED] at his residence. He indicated both he and his brother J [REDACTED] were attended 2<sup>nd</sup> Mile summer camps for one week periods for an estimated 3 years sometime between 2004 and 2007. S [REDACTED] indicated he then lost interest in the programs as he had become older. S [REDACTED] became involved in the program along with J [REDACTED], after the program was recommended by J [REDACTED]'s counselor. S [REDACTED] indicated that J [REDACTED] has "mental problems" something like Attention Deficit Disorder
2. S [REDACTED] also indicated that he and J [REDACTED] stayed at Sandusky's house "a lot". When asked to be more specific, he estimated he and S [REDACTED] stayed overnight at Sandusky's 7 or 8 times. He indicated that J [REDACTED] and he always were together in these overnight stays and summer camp stays.
3. S [REDACTED] indicated he did not know why Sandusky showed a special interest in him and/or his brother. He indicated that Sandusky would tell him he loved him and occasionally gave him a kiss on the head. He indicated he did not view these acts as sexual in nature. He indicated he never felt uncomfortable around Sandusky and would tell me if anything inappropriate had occurred. He elaborated that he has a current legal charge of rape pending against him and if something was done to him by Sandusky, he would report it. S [REDACTED] indicated he believes Sandusky is a great role model as he helps people in need.

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PENNSYLVANIA OFFICE OF ATTORNEY GENERAL  
CRIMINAL LAW DIVISION  
INVESTIGATIVE REPORT

CLD-1

Case #: 63275

INDEXING:

S [REDACTED] M [REDACTED] S [REDACTED]

DOB: [REDACTED]

SSN: [REDACTED]

[REDACTED]  
[REDACTED]

Cell Phone: [REDACTED]

Home Phone: [REDACTED]

ANTICIPATED ACTIONS:

[REDACTED]

ATTACHMENTS:

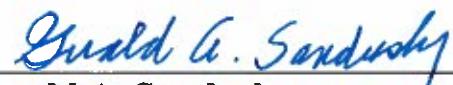
None

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**VERIFICATION**

I, Gerald A. Sandusky hereby verify that the statements contained in the foregoing document are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

  
**Gerald A. Sandusky**

**CERTIFICATE OF SERVICE**

I, Alexander H. Lindsay, Jr., Esquire, hereby certify that a true and correct copy of the foregoing document was served on the 8<sup>th</sup> day of February, 2023 on the following:

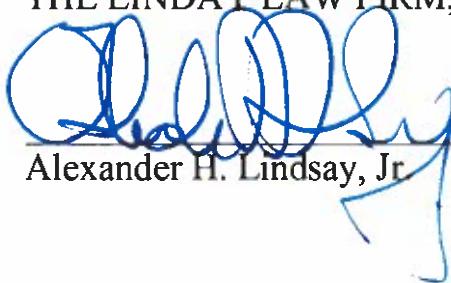
*Via email:*

Assistant Attorney General Jennifer A. Buck  
Office of the Attorney General – Criminal Prosecutions Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120  
[Jbuck@attorneygeneral.com](mailto:Jbuck@attorneygeneral.com)

Respectfully submitted,

THE LINDAY LAW FIRM, P.C.,

Alexander H. Lindsay, Jr.

A handwritten signature in blue ink, appearing to read "Alexander H. Lindsay, Jr.", is written over a horizontal line. The signature is fluid and cursive, with some loops and variations in thickness.

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Signature:

Name: Alexander H. Lindsay, Jr., Esquire  
Attorney No: 15088